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In The

SUPREME COURT OF THE UNITED STATES

October Term, 1995

JANICE C. CAMPBELL,

Petitioner,

v.

JOSEPH E. CAMPBELL, et al.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE MISSOURI COURT OF APPEALS WESTERN DISTRICT

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September, 1995

156pp

QUESTIONS PRESENTED FOR REVIEW

The questions presented for review are:

1. Whether it is consistent with the due process of law required by the Fifth Amendment to the Constitution of the United States, as applied to the states by Section One of the Fourteenth Amendment thereto, for a state trial court to send a jury away from the trial of an adversary probate action in the midst of plaintiff's case and enter a judgment without trial over plaintiff's objections on the oral motion of an administrator ad litem expressly based on said administrator's "independent examination" dehors the record.

2. Whether a state statutory provision is void for want of the due process of law required by the Fifth Amendment to the Constitution of the United States, as applied to the states by Section One of the Fourteenth Amendment thereto, when such provision is construed and applied so as to authorize a state trial judge to enter a judgment in an adversary action without trial and over the objections of an active adversary party.

3. Whether it is consistent with the due process of law required by the Fifth Amendment to the Constitution of the United States, as applied to the states by Section One of the Fourteenth Amendment thereto, for a state court in an adversary matter to take the side of one adversary party against the other and deny the other party a meaningful opportunity to be heard or to engage in reasonable cross-examination.

LIST OF PARTIES

The petitioner (plaintiff) in the discovery of assets action below is Janice C. Campbell. Her brothers Joseph E. Campbell and Richard F. Campbell are co-personal representatives (co-executors) of the decedent's estate of Joseph F. Campbell, the father of Janice C., Joseph E., and Richard F. Campbell. Joseph E. Campbell and Richard F. Campbell are also the respondents (defendants) in the discovery of assets action. Rebbecca Lake Overman is administrator ad litem of the decedent's estate. The administrator ad litem applied for the order to sell productive estate assets.

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1. The ruling below, that an adversary probate action may be decided without trial over the objection of a litigant, is a sharp departure from, and severely undercuts, the adversary system of decision on a record in favor of an inquisitorial system alien to historic concepts of due process mandated by the Constitution of the United States of America in judicial adversary actions.

2. The ruling below, that an adversary probate action may be decided by a court without trial over the objection of a litigant, conflicts with due process decisions of this Court, of state courts of last resort other than the Supreme Court of Missouri, and of United States courts of appeals.

3. The ruling below, that an adversary probate action may be decided without trial over the objection of a litigant, sows the seeds of a widespread dilution of constitutional due process.

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JANICE C. CAMPBELL,

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v.

JOSEPH E. CAMPBELL, et al.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE MISSOURI COURT OF APPEALS WESTERN DISTRICT

Janice C. Campbell ("Petitioner") petitions for a Writ of Certiorari to the Missouri Court of Appeals, Western District, to review the decision in Janice C. Campbell v. Joseph E. Campbell, et al., 898 S.W.2d 630 (Mo.App.W.D. 1995) denying her appeal from a judgment for discovery of assets and an order to sell estate property, both in the same decedent's estate.

OPINION BELOW

The opinion of the Missouri Court of Appeals, Western District, is reported at 898 S.W.2d 630 (Mo.App.W.D. 1995) and is reproduced at Appendix page A-98.

JURISDICTION

The opinion of the Missouri Court of Appeals, Western District, was entered on the fourteenth day of March 1995 (Appendix page A-98). The Supreme Court of Missouri denied Petitioner's application to transfer on the twentieth day of June 1995 (Appendix page A-123).

This Court's jurisdiction is invoked pursuant to 28 U.S.C. Section 1257 (a) (Appendix page A-2).

CONSTITUTIONAL AND STATUTORY PROVISIONS

The pertinent provisions of the Constitution of the United States of America are the Fifth Amendment thereto and Section One of the Fourteenth Amendment thereto. Their texts are set forth at Appendix page A-1.

The germane provisions of the Constitution of 1945 of the State of Missouri are Sections 10, 14 and 22(a) of Article 1 thereof. Their texts are set forth at Appendix page A-3.

The relevant provisions of the Revised Statutes of Missouri are Sections 472.141, 473.085, 473.277, 473.340 and 507.010. Their texts are at Appendix page A-4 through A-9.

STATEMENT OF THE CASE

Petitioner filed an action for discovery of assets against her brothers Joseph E. Campbell and Richard F. Campbell, who had been appointed co-personal representatives of the decedent's estate. Before trial, an administrator ad litem was appointed for the estate.

The discovery of assets provision of Missouri's probate code allows an aggrieved party to sue, for the estate's benefit, parties who have damaged the estate. The respondent brothers misappropriated and mismanaged the decedent father's property while the decedent was alive and incompetent, and his estate after his death (Appendix pages A-44 through A-65).

Petitioner duly demanded a jury under Section 473.340 of the Revised Statutes of Missouri (Appendix pages A-7 and A-8).

Trial commenced on Monday the twenty-fourth day of January 1994. Three days were spent establishing that decedent was incompetent for three or more years before his death (Appendix pages A-20 and A-21).

The state trial judge started the fourth day of trial by sending the jury away on the pretext that the case had been settled. Petitioner had not rested her case. The opinion below reflects some uncertainty about events (Appendix page A-102), but the record is both clear and sufficient. The trial judge told the jury that the administrator ad litem is "responsible to be administering the Estate ....", that she was "the officer of the Court in charge" and "the real party" with "legal authority" to make "final decisions"; the jury, he said, had "heard some of the evidence" (Appendix page 16). The

trial judge said that the administrator ad litem recommended a settlement and that the trial court could "accede to that settlement ... regardless of whether [the Petitioner] totally agrees...." and that the parties were probably not "very thrilled with what I'm going to make them do" (Appendix page A-17). And with that, the members of the jury were told their services were no longer needed: "You will not be required to decide this case on the facts" (Appendix page 17).

The one who was to decide the case on its facts was the administrator ad litem. In a settlement conference on the record after the trial judge excused the jury, she "determined" facts and issues by her "independent examination" outside the record (Appendix page 23). Among them were the date of onset of decedent's incapacity (Appendix pages A-20 and A-21) and the assets to be brought into the decedent's estate, including an assessment of liability against Petitioner, all core issues in the case, "determined" by the administrator ad litem without a trial (Appendix pages A-21 through A-27, A-56 through A-65). The administrator ad litem admitted that she was resolving jury issues (Appendix pages A-35 and A-36).

Petitioner did not agree to a settlement (Appendix pages A-20 through A-38, A-44 through A-55). The defendants below did agree (Appendix page 28), as the proposal was favorable to them (cf. Appendix pages A-44 through A-55 with pages A-56 through A-65). The judgment entry duly notes that the defendant brothers consented to the proposal (Appendix page A-64) and does not pretend that Petitioner acquiesced therein. In the judgment entry, also a part of the record below, the trial judge recites that judgment was rendered on the administrator ad litem's "oral motion" (Appendix page 56), which he had accepted on the record on

the twenty-seventh of January 1994 to cut off the trial (Appendix page 36). The record leaves no serious doubt that the trial court simply interrupted the trial, gave Petitioner's cause of action to the administrator ad litem, and let the administrator ad litem settle it as the administrator ad litem saw fit. The trial judge refused to hear more evidence and referred Petitioner to the administrator ad litem (Appendix pages A-34, A-35 and A-37).

Petitioner moved for mistrial and filed objections to the administrator ad litem's proposed settlement (Appendix pages A-39 through A-55), but did not then raise due process objections. Counsel relied on Section 473.085 of the Revised Statutes of Missouri, which plainly and unambiguously requires a written settlement agreement executed by all parties in interest before judgment may be entered on the settlement of an adversary probate matter (Appendix page A-5).

On the second day of March 1994, the trial judge nevertheless entered judgment on the administrator ad litem's oral motion (Appendix page A-56), which not only deprived Petitioner of her right of action under Section 473.340 of the Revised Statutes of Missouri but also imposed a liability on her (Appendix page A-65) all without trial. The judgment also failed to comply with the requirements of Section 473.085 (Appendix page A-5).

The denial of due process having been completed by the apparently unlawful judgment, Petitioner moved for new trial on constitutional and other grounds (Appendix pages A-84 through A-89). Petitioner has also reasserted her right to due process under the Constitution of the United States at each step of the appellate process (Appendix pages A-99, A-105, A-112, A-113, A-117, A-119 and A-120).

In the administrator ad litem's action for the sale of estate assets, an obviously biased state trial judge obstructed Petitioner's right to present evidence and cross-examine the administrator ad litem (Appendix pages A-74 through A-81).

The Missouri Court of Appeals, Western District, affirmed the state trial court's judgment depriving Petitioner of her cause of action and imposing liability upon her without trial in the discovery of assets action, and denying a meaningful hearing in the sale of assets action brought by the administrator ad litem (Appendix pages A-98 through A-108).

The Supreme Court of Missouri refused to review the decision of the Missouri Court of Appeals, Western District (Appendix pages A-123 and A-124) even though the Supreme Court of Missouri had previously held that probate settlements must comply with Section 473.085 (Mamoulian v. St. Louis University, 732 S.W.2d 512 (Mo.banc 1987) at page 515). Hence this case is a variation on Brinkerhoff-Faris Trust & Savings Co. v. Hill, 281 U.S. 673, 50 Sup.Ct. 451 (1930). In that case, the Supreme Court of Missouri found that a legal remedy previously denied was available, and its availability precluded plaintiff's action in equity, but it was then too late for the legal remedy. In this case, the protection afforded by Section 473.085 was previously held available, but then denied to Petitioner by the entry of judgment without complying with Section 473.085. In both cases, plaintiffs were deprived of property without being allowed to try their actions. In both cases, the constitutional points were raised immediately upon the action creating the situation - in a motion for new trial at the trial level in this case, in a petition for certiorari to the Supreme Court of Missouri in Brinkerhoff-Faris.

REASONS FOR GRANTING THE WRIT

1. The ruling below, that an adversary probate action may be decided without trial over the objection of a litigant, is a sharp departure from, and severely undercuts, the adversary system of decision on a record in favor of an inquisitorial system alien to historic concepts of due process mandated by the Constitution of the United States of America in judicial adversary actions.

This case presents an opportunity to determine whether the traditional adversary procedure of trial by the orderly spreading of evidence on a record before an objective fact-finder is to be replaced in whole or part by an inquisitorial system of decisions by judges and their appointees who determine when they have heard enough to decide by themselves, without the bother of a record. There appears to be no case in which this Court has ruled specifically on the authority of a state trial court to decide an adversary probate matter, over the objections of an adverse party (Appendix pages A-39 through A-55) without a trial.

A right of action is property entitled to protection against deprivation without due process of law (16D C.J.S. Constitutional Law Section 1139 citing Sliosberg v. New York Life Ins. Co., 216 N.Y.S. 215, 217 App.Div. 67, affirmed 155 N.E. 749, 244 N.Y. 482 and 155 N.E. 913, 244 N.Y. 599). Assessing liability against a party without trial, as in this case, deprives the party of property without due process of law (cf. Brinkerhoff-Faris Trust & Savings Co. v. Hill, 281 U.S. 673, 50 Sup.Ct. 451 (1930) at pages 453 - 454. A court may not dictate a settlement opposed by one or both parties (cf. In re LaMarre, 494 F.2d 753

(U.S.App. 6th Cir. 1974) at page 756). A statutory provision construed and applied to authorize unconstitutional action is, as so interpreted and applied, unconstitutional (cf. Brinkerhoff-Faris, supra, at page 454).

Courts are subject to constitutional constraints against denial of due process (Brinkerhoff-Faris Trust & Savings Co. v. Hill, 281 U.S. 673, 50 Sup.Ct. 451 (1930) at page 454). No "judgment is just if not obtained by due process of law; otherwise, courts could enter judgments without trial" (Union Pacific R. Co. v. Syas, 246 F. 561 (U.S.App. 8th Cir.) at page 568). Judgment without trial has come to pass in the instant case.

What constitutes due process in a state court trial is relatively clear. Due process does not include the disregard of the state's constitutional and statutory safeguards. The sovereign must follow its own rules; failure to do so is a denial of due process (Bluth v. Laird, 435 F.2d 1065 (C.A. Va.); Layton v. Swapp, 484 F.Supp. 958 (D.C. Utah; Myers v. Parkinson, 398 F.Supp. 727 (D.C. Wis.); Wolf-Lillie v. Kenosha County Sheriff, 504 F.Supp. 1 (D.C. Wis.), vacated on other grounds, 699 F.2d 864 (C.A.); United States ex. rel. Accardi v. Shaughnessy, 347 U.S. 260, 74 Sup.Ct. 409 at pages 503 - 504). The state's rules in this case, properly construed and applied, preclude the trial court's arbitrarily sending the jury away and entering a judgment not based on a record, for Petitioner is entitled to a jury trial and to protection against settlement without a written agreement executed by all competent parties with an interest (Sections 473.340 and 473.085 of the Revised Statutes of Missouri, Appendix pages A-5, A-7 and A-8).

Due process may indeed allow the discharge of a jury when motions for summary judgment or directed verdict are

made and sustained, or when an equitable issue is to be tried, but there was no such motion or issue in this case (Appendix pages A-12 through A-38 and A-111). Nor, as previously noted, did Petitioner agree to settle. The jury in this case was sent away on the sole ground that the administrator ad litem could ex officio appropriate Petitioner's cause of action and settle as if she were in Petitioner's shoes, over Petitioner's objection, on the basis of the administrator ad litem's "independent examination" outside the record.

The ordinary form of a jury trial is to spread evidence before the jury until both sides rest and argue, after which the jury deliberates and returns its verdict. A party may hold out for a verdict, absent successful motions for summary judgment or directed verdict by the adversary. A party is entitled to have the trial court follow the forms of law. "The right of a litigant to a trial in accordance with the forms of law, and with an opportunity to present his claim or defense, if he desires to do so, is a vital part of due process." Ackermann v. United States, 178 F.2d 983 (Cir.5 1949).

Due process requires a meaningful hearing with the right to present evidence and confront and cross-examine witnesses; decision must be made on a record (Goldberg v. Kelly, 397 U.S. 254, 90 Sup.Ct. 1011 at pages 1020 - 1021 (1970)). The trial court in the instant case refused to hear evidence in both the discovery of assets trial and the sale of assets proceeding. It was obvious in the sale of assets hearing that the resulting order to sell assets was based on material outside the record and that the trial court was determined to allow no meaningful record be made, at least none for Petitioner (Appendix pages A-74 through A-82).

The delegation of judicial power in this case violates due process. The administrator ad litem formulated the

proposal, presumably at home alone, working until late at night, "Eleven o'clock" (Appendix pages A-16 and A-17) on her "independent examination" by which she "determined" factual and legal issues (Appendix page A-23) including jury issues (Appendix pages A-35, A-36 and A-56 through A-65). Compare the statute purporting to allow the New Hampshire Attorney General to conduct investigations into alleged subversives when he had information that "...in his judgment may be reasonable or reliable", found unenforceable on constitutional grounds in Sweezy v. State of New Hampshire, 354 U.S. 234, 77 Sup.Ct. 1203, 1 L.Ed.2d 1311 (1957).

The "concept of ordered liberty" enshrined in the Fifth Amendment is implicit in the Fourteenth Amendment as applied to the states (Sweezy, supra). The trial court's reliance on an individual decision made behind the eyes of one of its appointees, without a record susceptible of objective review, is redolent of the Star Chamber, the religious inquisitions of the Middle Ages, and certain foreign legal systems, not the due process of law required by the Constitution of the United States of America.

Arrogating decision-making authority from the litigating parties and the jury to the judge and his appointee has obvious attractions for the trial court. It is more convenient, and takes less time in the short run, than conducting a jury trial to a verdict. But due process is not to be sacrificed on the altar of administrative ease (Stanley v. Illinois, 405 U.S. 645, 31 L.Ed.2d 551, 92 Sup.Ct. 1208). Reposing such power in the trial judge and his appointee gives free rein to potential bias, influence and error.

If, indeed, Sections 473.085 and 473.340.2 of the Revised Statutes of Missouri do not limit imposed resolutions of adversary probate matters over a litigant's objection and

if indeed Section 473.277 authorizes the administrator ad litem to take a plaintiff's right of action and settle it without regard to the plaintiff's wishes and to assess liability against a party without trial, then, for the reasons previously stated, it is void for want of due process. A statute cannot constitutionally authorize unconstitutional state conduct (Brinkerhoff-Faris Trust & Savings Co. v. Hill, 281 U.S. 673, 50 Sup.Ct. 451 (1930).

The opinion below tries to justify the trial court's conduct on the merits. However, a judgment arrived at in violation of due process is void, even if it can be justified on the merits (16D C.J.S. Constitutional Law Section 1168, citing Inland Steel Co. v. N.L.R.B., C.C.A. 7, 109 F.2d 236, affirmed 71 Sup.Ct. 209, 340 U.S. 193, 95 L.Ed. 207).

2. The ruling below, that an adversary probate action may be decided by a court without trial over the objection of a litigant, conflicts with due process decisions of this Court, of state courts of last resort other than the Supreme Court of Missouri, and of United States courts of appeals.

As noted, Missouri's denial of legal remedy to Petitioner, whether by Court or legislature, is in conflict with this Court's opinion in Brinkerhoff-Faris Trust & Savings Co. v. Hill, 281 U.S. 673, 50 Sup.Ct. 451 (1930). The expropriation of Petitioner's right of action and the imposition of liability without trial are at odds with In re LaMarre, supra pages 7 and 8 and Union Pacific R. Co. v. Syas, supra page 8. Missouri's failure to follow its own rules flies in the face of this Court's decision in United States ex. rel. Accardi v. Shaughnessy, 347 U.S. 260, 74 Sup.Ct. 409 and the Sixth Circuit's decision in Bluth v. Laird, 435

F.2d 1065. The casual acceptance, in the ruling below, of the trial court's utter disregard of judicial procedure by first denying Petitioner a jury and then denying her any trial and delegating the matter to the administrator ad litem for decision off the record, and denying a meaningful hearing on the sale of productive assets from an estate in which Petitioner has a beneficial interest, is contrary to this Court's rulings in Shaughnessy, supra, Ackermann, supra, Goldberg, supra and Sweezy, supra, regarding a party's right to be heard, to cross examine and to present evidence, and the adjudicator's obligation to make decisions on a record.

The opinion below is also in conflict with due process decisions of state courts of last resort other than Missouri's. See Smith v. Atty. Gen. of Maryland, 415 A.2d 651 (Md.App.1980); Alabama Public Service Commission v. Mobile Gas Co., 104 So.538, 213 Ala. 50, 41 A.L.R. 872; and Steele v. Gann, 123 S.W.2d 520, 197 Ark. 480, 120 A.L.R. 754.

3. The ruling below, that an adversary probate action may be decided without trial over the objection of a litigant, sows the seeds of a widespread dilution of constitutional due process.

Death or incompetency, or both, will touch and concern every person.

Each of the United States makes provision for the estates of decedents and incompetents.

Many states, by statutory provisions similar to Section 473.277 of the Revised Statutes of Missouri, authorize court-appointed fiduciaries to compromise and settle claims for and

against their estates; among them are Alabama, Section 43-2 -390, Arizona Section 14-3952, Arkansas Section 28-49-104, California Section 9830, Colorado Section 15-12-1101, Connecticut Section 45a-151, Georgia Section 53-7-107, Hawaii Section 560:3-1101, Indiana Section 29-1-13-5, Iowa Section 633.114, Kansas Section 59-1714, Kentucky Section 395.240, Louisiana Article 3198, and Maine Section 3-1101. Such provisions seem intended to protect the fiduciary actively engaged in administering the estate from second-guessing by passive parties with an interest in the estate. In the instant case, however, Petitioner filed the action and brought it to trial.

The opinion below exalts judicial misconduct to the level of precedent. It is an open invitation to construe and apply provisions authorizing compromise in an unbridled way, to resolve conflict by dictating judgments without meaningful hearing or the orderly presentation of evidence to an unbiased finder of fact on a record susceptible of meaningful review.

The trial court's notion that the administrator is the real party in interest (Appendix A-16) is contrary to law and fact; obviously, the real parties in interest are the beneficiaries and creditors of the estate. Missouri's real party in interest statute, in carving out an exception for administrators and other fiduciaries, expressly recognizes their representative capacity (Appendix page A-9).

The notion that a trial judge's discretion to admit evidence is absolute (Appendix pages A-105 through A-108) flies in the face of due process. Discretion carried to the point of arbitrariness violates due process (New York v. O'Neill, 359 U.S. 1, 3 L.Ed.2d 585, 79 Sup.Ct. 564; State ex rel. Williams v. Marsh, 626 S.W.2d 223 (Mo.banc 1982)

at page 230; 16A Am.Jur.2d Constitutional Law Sections 839, 848 and 849; Adams By and Through Adams v. Children's Mercy Hospital, 832 S.W.2d 898 (Mo. 1992) at page 906, cert. den. 113 S.Ct. 511, 121 L.Ed.2d 446, transferred to 848 S.W.2d 535; Tullock v. St. Charles, 602 S.W.2d 860 (Mo.App. 1980) at pages 862-863; Smith v. Atty. Gen. of Maryland, 415 A.2d 651 (Md.App. 1980); and In re S M W , 485 S.W.2d 158 (Mo.App. 1972) at pages 163-164). The protection of individuals against arbitrary state action is the great purpose of constitutional due process (Wilwording v. Swenson, 502 F.2d 844, cert.den. 95 S.Ct. 835, 420 U.S. 912, 42 L.Ed. 843, on remand 405 F.Supp.447, affirmed 538 F.2d 332).

The record shows the trial judge was not merely biased, but passionately so. Had he not been so ardent, he might have heard the evidence, decided in accord with his predilections, and let Petitioner take her appeal on a meaningful record. Instead, he chose to conduct a hearing that was crudely and blatantly unfair to Petitioner herein, without regard to the requirements of due process. An unbiased tribunal is fundamental to due process (Schweiker v. McClure, 456 U.S. 188, 72 L.Ed.2d 1, 102 Sup.Ct. 1665).

As the population ages, conflicts resulting from misappropriation of estate assets would seem likely to increase. Judges will be increasingly tempted to eschew the deliberate pace of due process in favor of a judicially dictated resolution of conflict. Contrary to their intuition, this will not necessarily save time and money. Miscreants who have helped themselves to an incompetent's property may resist settlement in the hope that the trial court will let them retain half a loaf, or more, to clear its docket or indulge its bias or caprice, and outraged litigants whose property has been taken

without trial are likely to appeal. Indeed, both tendencies appear in the instant case.

There is no reason to expect that the adverse impact of the ruling below will be limited to probate matters. Clearly, Petitioner does not consider the Missouri courts' deviations from due process to be trivial. Rather, she views them as judicial misconduct of epic proportions. Those who may be disposed to deem them slight, however, might ponder this Court's caveat in Boyd v. United States, 116 U.S. 616, 635, 29 L.Ed. 746, 752, 6 Sup.Ct. 524, 535 (1886) quoted by Justices Frankfurter and Harlan concurring in Sweezy, supra page 10, that "illegitimate and unconstitutional practices get their first footing ... by silent approaches and slight deviations from legal modes of procedure." As other judicial and administrative proceedings are often held to a lower standard than full-fledged judicial adversary proceedings, the others may admit of more arbitrariness and caprice. Holes in the model become holes in the shadow. The effect, therefore, of this Court's reviewing this case, or not, bodes fair to be wide and deep.

CONCLUSION

The opinion below strongly favors the rule of men over the rule of law. If this Court wishes to enable trial courts to dictate judgments and orders without hearing cases or allowing the exercise of fundamental constitution rights, and if it wishes to turn its collective back on reams of constitutional lore, this is an excellent opportunity to do so by affirming or refusing to take for review the decision below. If, on the other hand, this Court wishes to keep the courts below free from the unconstitutional arrogance exemplified by this case, it will issue its writ.

For the foregoing reasons, the requested writ of certiorari should issue.

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APPENDIX

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FIFTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES OF AMERICA

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES OF AMERICA

Section 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

28 U.S.C. Section 1257

(a) Final judgments or decrees rendered by the highest court of a State in which a decision could be hade, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any state is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

(b) For the purposes of this section, the term "highest court of a State" includes the District of Columbia Court of Appeals.

Article 1, Section 10, Missouri Constitution 1945

That no person shell be deprived of life, liberty or property without due process of law.

Article 1, Section 14, Missouri Constitution 1945

That the courts of justice shall be open to every person, and certain remedy afforded for every injury to person, property or character, and that right and justice shall be administered without sale denial or delay.

Article 1, Section 22(a), Missouri Constitution 1945

That the right of trial by jury as heretofore enjoyed shall remain inviolate; provided that a jury for the trial of criminal and civil cases in courts not of record may consist of less than twelve citizens as may be prescribed by law, and a two-thirds majority of such number concurring may render a verdict in all civil cases; that in all civil cases in courts of record, three-fourths of the members of the jury concurring may render a verdict; and that in every criminal case any defendant may, with the assent of the court, waive a jury trial and submit the trial of such case to the court, whose finding shall have the force and effect of verdict of a jury.

Section 472.141, Revised Statutes of Missouri 1994

1. An adversary probate proceeding shall be governed by the civil code of Missouri and the rules of civil procedure; except that:

(1) Where the probate code or any other statute contains a provision prescribing practice, procedure or pleading, applicable to the pending proceeding, the provisions of the probate code or such statutes shall govern; and

2. The provisions of chapter 509, RSMo, and civil rule 55 shall not apply unless specifically made applicable by a provision in the probate code or unless the court enters an order designating all or specific provisions of chapter 509, RSMo, or civil rule 55 applicable to a particular adversary probate proceeding.

3. The civil code of Missouri and the rules of civil procedure shall govern all other actions or proceedings which may be heard by a judge of the probate division pursuant to assignment or otherwise, except as otherwise provided by law.

Section 473.085, Revised Statutes of Missouri 1994

The procedure for securing court approval of a compromise is as follows:

(1) The terms of the compromise shall be set forth in an agreement in writing which shall be executed by all competent persons and parents acting for any minor child having beneficial interests or having claims which will or may be affected by the compromise. Execution is not required by any person whose identity cannot be ascertained or whose whereabouts are unknown and cannot reasonably by ascertained;

(2) Any interested person, including a personal representative or trustee, may then submit the agreement to the court for its approval and for execution by the personal representative , the trustee of every affected testamentary trust, and other fiduciaries and representatives;

(3) After notice to all interested persons or their representatives, including the personal representative of the estate and all affected trustees of trusts, the court in which the controversy is pending, if it finds that the contest or controversy is in good faith and that the effect of the agreement upon the interests of persons represented by fiduciaries or other representatives is just and reasonable, shall make an order approving the agreement and directing all fiduciaries over which it has jurisdiction to execute the agreement. Minor children represented only by their parents may be bound only if their parents join with other competent persons in execution of the compromise. Upon the making of the order and the execution of the agreement, all further disposition of the estate is in accordance with the terms of the agreement.

Section 473.277, Revised Statutes of Missouri 1994

When it appears for the best interest of the estate, the executor or administrator, on order of the court, may effect a fair and reasonable compromise with any debtor or other obligor, or extend, renew or in any manner modify the terms of any obligation owing to the estate. If the executor or administrator holds a mortgage, pledge or other lien upon property of another person, he may accept, in lieu of foreclosure, a conveyance or transfer of the encumbered assets from the owner thereof in satisfaction of the indebtedness secured by the lien, if it appears for the best interest of the estate and if the court so orders. In the absence of prior authorization or subsequent approval of the court, no compromise binds the estate.

Section 473.340, Revised Statutes of Missouri 1994

1. Any personal representative, administrator, creditor, beneficiary or other person who claims an interest in property which is claimed to be an asset of an estate or which is claimed should be an asset of an estate may file a verified petition in the probate division of the circuit court in which said estate is pending seeking determination of the title, or right of possession thereto, or both. The petition shall describe the property, if known, shall allege the nature of the interest of the petitioner and that title or possession of the property, or both, are being adversely withheld or claimed. The court may order the joinder, as a party, of any person who may claim an interest in or who may have possession of any such property.

2. Service of summons, petition and answer thereto together with all subsequent proceedings shall be governed by the Missouri Rules of Civil Procedure. Any party may demand a jury trial.

3. Upon a trial of the issues, the court shall determine the persons who have an interest in said property together with the nature and extent of any such interest. The court shall direct the delivery or transfer of the title or possession, or both, of said property to the person or persons entitled thereto and may attach the person of any party refusing to make delivery as directed. If the party found to have adversely withheld the title or possession, or both, of said property has transferred or otherwise disposed of the same, the court shall render a money judgment for the value thereof with interest thereon from the date the property, or any interest therein, was adversely withheld. In addition to a judgment for title and possession, or either, of for the value

thereof, the court may enter a judgment for all losses, expenses and damages sustained, if any but not including attorney fees, if it finds that the property was wrongfully detained, transferred or otherwise disposed of.

4. If the court finds that a complete determination of the issues cannot be had without the presence of other parties, the court may order them brought in by an amended or supplemental petition. The court shall order the joinder of the personal representative of the estate if he is not named as a party.

Section 507.010, Revised Statutes of Missouri 1994

Every action shall be prosecuted in the name of the real party in interest, but an executor, administrator, personal representative, guardian, conservator, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in his own name in such representative capacity without joining with him the party for whose benefit the action is brought; and when a statute so provides, an action for the use or benefit of another shall be brought in the name of the state of Missouri.

IN THE CIRCUIT COURT OF JACKSON COUNTY
SIXTEENTH JUDICIAL CIRCUIT,PROBATE DIVISION

JANICE C. CAMPBELL	)	
	)	
Petitioner	)	
	)	
vs.	)	Case No. PR89-030836-01
	)	
JOSEPH E. CAMPBELL, et al.	)	
	)	
	)	
Respondents	)	
	)	
In the Estate of Joseph F. Campbell	)	Estate No. 30836
	)	
	)	
Deceased	)	

DEMAND FOR JURY TRIAL

COMES NOW Janice C. Campbell by her attorney Albert W. L. Moore, Jr., and pursuant to Section 473.340.2 of the Revised Statutes of Missouri demands trial by jury of the above-captioned cause.

Albert W. L. Moore, Jr.
554 South Ash
Post Office Box 7800
Independence, Missouri 64053
(816) 254-6070

ATTORNEY FOR PETITIONER
JANICE C. CAMPBELL

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing demand for jury trial was mailed on this fourteenth day of September 1993 to Les D. Wight, Esq., 530 East 23rd Street, Independence, Missouri 64055, Attorney for Respondents, and to Rebbecca Lake Overman, Esq., 221 West Lexington, Independence, Missouri 64050, Administrator ad Litem.

_____

Albert W. L. Moore, Jr.
Attorney for Petitioner

IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT

JANICE C. CAMPBELL,	)	
	)	
Appellant,	)	
	)	
vs.	)	W.D. No.
	)	49245
	)	
JOSEPH E. CAMPBELL,	)	
RICHARD CAMPBELL and	)	
REBBECCA OVERMAN,	)	
Administrator ad Litem	)	
for the Estate of	)	
Joseph F. Campbell,	)	
deceased,	)	
	)	
Respondents.	)	

IN THE CIRCUIT COURT OF JACKSON COUNTY
SIXTEENTH JUDICIAL CIRCUIT, PROBATE DIVISION
Honorable John A. Borron, Jr., Judge

JANICE C. CAMPBELL,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No.
	)	PR89-030836-01

JOSEPH E. CAMPBELL,)
RICHARD CAMPBELL and)
REBBECCA OVERMAN,)
Administrator ad Litem)
for the Estate of)
Joseph F. Campbell,)
deceased,)
)
Respondents.)

RECORD ON APPEAL -- TRANSCRIPT PROCEEDINGS OF JANUARY 27, 1994

APPEARANCES

For Petitioner/Appellant: ALBERT W. L. MOORE, JR.,
554 South Ash
Independence, Missouri 64053

For the Respondents: LES D. WIGHT
530 East 23rd Street
Independence, Missouri 64055

For the Estate of
Joseph F. Campbell: REBBECCA OVERMAN
Administrator ad Litem
Cochran, Kapke, Willerth
221 West Lexington
Post Office Box 180
Independence, Missouri 64051

TRIAL PROCEEDINGS

The trial began on the 24th day of January 1994 before the Honorable John A. Borron, Judge of the Circuit Court of Jackson County, Missouri, Probate Division, Missouri, and a jury was impaneled, selected and sworn.

The Petitioner, Janice C. Campbell, was present in person and represented by Albert W. L. Moore, Jr., 554 South Ash, Independence, Missouri 64053.

The Respondents Joseph E. Campbell and Richard Campbell were present in person and represented by Les D. Wight, 530 East 23rd Street, Independence, Missouri 64055.

The Estate of Joseph F. Campbell was represented by Rebbecca Overman, Administrator ad Litem, 221 East Lexington, Post Office Box 180, Independence, Missouri 64051.

[All proceedings from January 24, 1994, through January 26, 1994, omitted at request of counsel for the Petitioner.]

THURSDAY, JANUARY 27, 1994

[In session at 9:55 a.m.]

THE COURT: Ladies and gentlemen of the jury, there's been some mysterious things going on from your point of view, I'm sure. I'm now in a position to explain to you what has happened and why.

Ms. Overman -- who you were introduced to in the preliminaries -- is the personal representative of the estate. As personal representative, she is responsible to be administering the Estate of Joseph F. Campbell, deceased. In that regard Mr. -- the two Mr. Campbells and Ms. Janice Campbell are heirs or beneficiaries of that estate. They will each take a one-third share of the probate estate.

Before that estate can be closed, there are certain claims and expenses of administration which must be paid and/or resisted or contested, and that will be Ms. Overman's responsibility. She is the officer of the Court in charge of Joseph Campbell's estate.

Ms. Janice Campbell early on, as you've heard in the testimony, perceived that she felt she was not receiving a fair share of what should have been in Mr. Campbell's estate; and so she retained Mr. Moore and here we are. You've heard some of the evidence in regard to what is going on.

Ms. Overman is the real party here who has the legal authority, in my view, to make final decisions as to what is in the best interests of this estate. And basically what we're talking about is what's in the best economic interests. In other words, it's going to cost a lot more to go forward or is -- can we obtain a result at this point which would be economically beneficial to the estate, i.e., to these three individuals ultimately.

She has advised me -- she asked me yesterday for time to get into some facts and figures and to consult with Mr. Wight and with Mr. Moore regarding a possible settlement of this case. And I granted her that time, and she worked until late in the night, I think.

MS. OVERMAN: Eleven o'clock.

THE COURT: Till 11 p.m. last night with records determining what her position would be and then came in -- that's why I said come in at 9:30, because I knew they needed some lead time this morning to talk with each other and then talk to me, and so that's what happened.

Ms. Overman has advised me that she recommends a settlement of this estate, and she's explained generally the terms of that settlement. I believe I have the legal authority to accede to that settlement proposition regardless of whether or not Ms. Campbell totally agrees with that settlement. And so that's what I'm doing.

And so what I'm telling you is that the case has been settled. You will not be required to decide this case on the facts. I want you to understand, however, that your presence here has been extraordinarily important in getting the parties to the point where we're at.

And probably none of the parties here -- I've been around practicing law for over 30 years and a judge for over 20. And the rule of thumb is that if neither side is very happy with the agreement or with the result, why it's probably pretty nearly right. And I think in this case neither parties [sic] are very thrilled with what I'm going to make them do, and therefore, I hope in the long run they will conclude or that fate or history will tell us that this is probably a fairly right result.

So I want to thank you for your cooperation and your attention. I asked for two alternates because this was advertised as a five-day trial. If somebody got sick or disabled, I didn't want the trial to be aborted because we didn't have enough jurors. So the alternates were important to be present and on board in case there was a mishap. I've had in the past to use both alternates in prior jury trials because of the problems with jurors. So -- so it's important that the alternates were here too.

I'm telling you all this because you've been perhaps aggravated, perhaps impatient and perhaps frustrated with what was going on, and I think you're entitled to this explanation.

I also think you should understand, at least from my appointment of view, that in the Anglo-American legal system there are two very, very important articles of citizenship that nobody else in the world has, really, like we do. That is the right to vote and the right to sit in judgment on fellow man.

And interestingly, although in England -- that's where the jury trial concept came from. In England you're not entitled to a jury in a civil action such as this. The judge decides a civil action such as this in England, and the only juries now sitting in England are those on criminal cases of a certain type, serious criminal cases, and certain types of civil rights cases where the Crown, i.e., the equivalent of our federal government, has done something wrong, you know, in some act of the government.

So really, we're the only country in the world that has quite the jury system that you're participating in. I think it's a really tremendous thing, and I appreciate very much your participation. With all of that, I'd like to dismiss you. We don't have -- do we have certificates?

THE BAILIFF: Yes.

THE COURT: By golly we have these large certificates. And as the reporter suggested the other day, a follow judge is in the habit of saying, we have there very nice, large certificates, and you'll receive in the mail a very small check. But maybe -- maybe your experience is worth the effort, and I thank you very much for being here.

And you will be discharged and you won't be called back. You're free to go home, go about your business, and thank you very much.

You may -- Mr. Wight would like to talk to some of you. You are -- you may talk to him if you wish. You're not required to, but I don't know what -- are you going to collect the tags or do they send them --

THE BAILIFF: I collect them.

THE COURT: Okay. Good. You're not required to talk to him, but you may talk to him if you're so disposed.

This -- thank you all very much. You're discharged.

[Jury excused by the Court.]

THE COURT: Okay. Now, you have that to do, he's going to do that and then the three lawyers will talk to me, right?

MS. OVERMAN: Yes.

THE COURT: All right.

[Brief recess taken.]

THE COURT: Thank you, Mr. Yavoli. Ms. Overman.

MS. OVERMAN: Your Honor, at -- after considerable effort to review all of the financial records available to me, including all of the bank records of Standard State Bank checking account that was the account, exclusive account of the decedent until the assistance and intervention of his two sons, I am reasonably satisfied that I have been able to determine what assets should have been an asset in this decedent's estate effective August of 1983.

It is my recommendation to the Court for compromise and settlement of this dispute that Mr. Campbell, the decedent, be determined to have been incapacitated effective on his admission to the nursing home in August 1983. I believe the exact date is August 10th?

MR. WIGHT: July, Independence Center.

MR. MOORE: I think -- I think we would probably differ and take a date to be about April 11th.

THE COURT: It's your determination it's August 10th in the nursing home?

MS. OVERMAN: My determination is that of his admission to the nursing home. For my purposes I have been using a date of August 1 to examine records, to give myself some leeway and flexibility as to the exact date.

Based on the use of that date as a starting point for the examination of the transfer of assets that occurred, I am reasonably satisfied that the following assets were in some form or another ultimately either transferred out of Mr. Campbell's name and therefore his estate, or are the resulting assets that can be traced from the liquidation of other assets in his possession at that time. If that is clear.

And I will list to the Court the assets that I believe should be made assets of this estate.

THE COURT: You're using that format?

MS. OVERMAN: I am using that format, and I will have it marked in as --

THE COURT: All right. Just so the reporter can follow that.

MS. OVERMAN: Yes. The -- and I'll just -- I think I can just make my report here.

I have made some additional notations, Your Honor, since the form that I gave you.

The assets that I am including in -- recommending be included in this estate are as follows:

First, a parcel of real property located at Blue Springs, Missouri, with a legal description Lot 8, Sandalwood Addition, Blue Springs, Jackson County, Missouri. There has been no formal appraisement of that property, but I estimate its value to be between seventy-one and seventy-five thousand dollars. That assets is presently titled to Joe E. Campbell.

The second asset is a Standard State checking account number -

MR. WIGHT: That number doesn't look right to me.

MS. OVERMAN: I was going to say --

MR. WIGHT: That's the operating account. That's the wrong number.

[A discussion was held off the record.]

MS. OVERMAN: All right. It is Account No. 203 -

[A discussion was held off the record.]

MS. OVERMAN: All right. Back on the record.

That account number is Account No. 200243-4.

I estimate that a proper balance in that account should be the sum of $4,022.09. I base that on a review of distributions from that account, including all of the checks examined from August 1, 1983, until this estate was placed with the Court for closing back in 1991 and is now part of the Court's file.

I determined from my independent examination of the transactions that Richard Campbell received the sum of $2,241.36 for -- directly for his benefit and not for any benefit of the now decedent.

I determined that Joseph E. Campbell received for his personal benefit and not for the benefit of the now decedent the sum of $1,774.31.

Additionally, I found that the co-personal -- then co-personal representatives could not account for by receipt two entries in their settlement that was filed with the Court in 1991. Those entries total $5.79.

The bank statement indicates that the last balance in the account at Standard State Bank was the sum of $.63, and so I would attribute the $4022.09 as the combined value of the monies removed to the benefit of Richard and Joseph E. Campbell, as well as items they could not properly account for.

Third, Certificate of Deposit No. 890076 at Standard State Bank which was previously distributed to Richard Campbell on May 2nd, 1986, which bore a principal amount of $10,000. Additionally, I have calculated interest on those monies from the date of distribution to today's date using an average interest rate of 6.5 percent.

On that calculation I recommend that the Court take as interest from Richard Campbell the sum of $5,037.50 for a total value of this asset of $15,037.50

Fourth, a 1967 motorcycle previously distributed to Janice Campbell and valued at $100.

Fifth, a 1968 17-foot Silver Eagle trailer previously distributed to Janice Campbell with a value of $150.

Sixth, a 1967 Mark Twain 120-horsepower boat previously distributed to Janice Campbell with a value of $150.

THE COURT: For the record, obviously that is an inboard boat, but the engine is damaged substantially; is that your understanding?

MS. OVERMAN: That's my understanding, and that's --

THE COURT: Go ahead.

MS. OVERMAN: Your Honor, I would add that the values of these personal property items -- the motorcycle, the trailer, and the boat -- have been agreed upon by the parties, essentially.

THE COURT: Okay. Go ahead.

MS. OVERMAN: Seventh, a 1973 Jeep CJ5 motor vehicle previously distributed to Richard Campbell which I have valued at $1500.

No. 8, a 1970 Ford wagon, engine only, previously distributed to Joseph -- to Joe E. Campbell which I have valued at $200. It is my understanding that asset is still within my grasp, and I will take it back and sell it for whatever arm's-length transaction is appropriate.

No. 9, a 1954 homemade trailer previously distributed to Richard Campbell which I have valued at $200.

No. 10, a frame trailer previously distributed to Janice Campbell which I have valued at $75.

No. 11, household goods with a combined value of $1,000. I attribute $750 of the value of those household goods as cash sale proceeds received by Janice Campbell from the partial sale of household goods.

I attribute $175 value to items specifically -- specific items taken by Richard Campbell. They are, to my understanding, a refrigerator, an air conditioner, and miscellaneous goods.

And I attribute the remaining $75 in value as items taken by Joe Campbell made up of miscellaneous goods.

No. 12, Ford, Inc., dividend checks which were distributed to Richard Campbell and Joe E. Campbell in the following amounts:

$1,813 to Richard Campbell;

$5,537 to Joe E. Campbell.

For the record, Your Honor, you will note that -- that I have examined the settlement filed by the then co-personal representatives, and they did account for those monies as being estate assets and have admitted that those items are, in fact, estate assets.

No. 13, rent on 1928-1/2 Ash, Independence, Missouri. This is real estate presently held in the name of the estate for which rent was received by Janice Campbell. The total of that rent has been determined to be the sum of $16,800.

Again, using the calculation of six-and-one-half percent as the interest rate, I have calculated the per-month rental interest, and that total is $4,290.45.

And if you-all want to do it yourself on a month-to-month, you go ahead. Because I spent a lot of time last night figuring month-to-month interest.

No. 14, C.D. No. 10510 -- which was the number of that certificate on August 1, 1983 -- was previously distributed on October 1985 in another certificate number to Joe E. Campbell. The Principal of that certificate is $10,000.

Again, using an average interest rate of 6.5 percent, I have calculated the interest on the certificate to be $5,416.66. And it is my recommendation that Joe E. Campbell be charged with the total sum of $15,416.66.

No. 15, Certificate of Deposit No. 10881. That is the certificate number applied on the August of 1983 date was previously distributed to Janice Campbell on November, 1984. The principal of that certificate was $10,000.

Again, using the same interest rate as previously distributed, I calculated interest in the sum of $6,012.50 and recommend to the Court that Janice Campbell be charged with the total of $16,012.50.

No. 16, Certificate of Deposit 12825 -- the number of that certificate on August 1983 -- previously distributed to Joe E. Campbell on March of 1986 for a principal value of $10,000.

I've calculated interest at the previously-described rate of $5,200 and recommend that the Court charge Joe E. Campbell with the sum of $15,200.

No. 17, Certificate of Deposit No. 13443 -- the date that the certificate bore on August 1993 -- previously distributed to Richard Campbell on April 1984 with a principal value of $10,000.

Using the same interest calculation, the interest rate would be -- interest amount would be $6,337.50 and recommend to the Court that Richard Campbell be charged with the amount of $16,337.50.

Number 18, Certificate of Deposit 10859 -- which was the number that certificate bore in August of 1983 -- previously distributed to Richard Campbell on August -- excuse me -- September 1985, bore a principal value of $10,000.

Using the same interest calculation, I've determined the interest rate due would be $4,820.83 and recommend that Richard Campbell be charged with the total sum of $14,820.83.

Your Honor, that completes the listing of assets that I recommend be added to this estate to make up a complete estate, based on my value of the assets and on the evidence concerning Mr. Campbell's medical condition in 1983, and a date of disability or incapacity.

THE COURT: Mr. Wight?

MR. WIGHT: Your Honor, without any admissions regarding the factual matters that would have been found in case of a trial, my clients have agreed to this as a compromise settlement and would be willing to stipulate to the admission of these assets --

THE COURT: And to convey these assets that are in the sole names into the estate --

MR. WIGHT: If she so requires. There will be some complications on the CDs that are cashed.

THE COURT: I understand. But in any event -- for example, the real property in Blue Springs if required would be conveyed to the personal representative?

MR. WIGHT: Should that be required, we will cooperate and do that.

THE COURT: All right.

Now, Mr. Moore, primarily we have a number of items of value attributed to Ms. Janice Campbell, i.e., the '67 motorcycle for $100. I assume there's no problem with that valuation?

MR. MOORE: Your Honor, I'm not so concerned about --

THE COURT: Let me -- let me go through these, may I?

MR. MOORE: I'm sorry, I thought you were through.

THE COURT: No, I'm not. I'm starting with the motorcycle, No. 4, no problem with value? No problem with value?

MR. MOORE: No, I don't think so.

THE COURT: Five, no problem with value?

MR. MOORE: I don't think we want to quibble with it.

THE COURT: No problem with six?

MR. MOORE: No quibble with six.

THE COURT: All right.

Now, no problem with 10, on the value of the frame trailer?

MR. MOORE: No, Your Honor.

THE COURT: No problem, I assume, with 11, as to Ms. Campbell's allocation on household goods. That was the auction proceeds, wasn't it?

MR. MOORE: I thought the cash value proceeds came to about $400, but that's small change.

MS. OVERMAN: There was --

THE COURT: All right.

MR. MOORE: There was a $350 check.

THE COURT: All right.

Now, Ms. Campbell acknowledges receipt of the rent in 13?

MR. MOORE: No, we're not certain about that exactly, Your Honor. We'd like to check that.

THE COURT: Well, she did testify that she was getting three -- the only question is whether or not she got in kind and set-offs in cash. So the question here is the value of the rent, whether it be in kind or cash. She got rent at 53 months at three -- it was fifty some odd months?

MR. WIGHT: It was 53 months, Judge.

THE COURT: Fifty-three months at $300 a month in cash or in kind, right?

MS. CAMPBELL: Well --

THE COURT: He's talking.

MR. MOORE: If the Court --

THE COURT: Excuse me.

MR. MOORE: If the Court would allow us, we'd like to review this entire presentation.

THE COURT: Well, I want an answer right now.

MR. MOORE: On this one?

THE COURT: Yeah.

MR. MOORE: I'm afraid I'm not in a position to do that.

THE COURT: All right.

MR. MOORE: But the difference won't be very great on that.

THE COURT: All right. Okay. Thank you.

Now, the other thing is, I believe Ms. Campbell also testified to this one -- this one -- Item 15 --

Sit down, Mr. Ashenfelter. I'm talking to Mr. Moore.

This one, 15 -- Item 15, this was the CD that, well, was received by her. These were the -- were these the three CDs, the original CDs that were described in general, probably?

MS. OVERMAN: Yes, sir.

THE COURT: All right. Okay.

MS. OVERMAN: The $10,000 CD, Item No. 15, was liquidated and used to purchase a motor vehicle for Ms. Campbell. Yesterday in conference --

THE COURT: That was established in that --

MS. OVERMAN: And I am satisfied that at least $10,000 was spent on the motor vehicle. She was --

MR. MOORE: Ms. Campbell is still not certain, but --

THE COURT: In general we're close?

MR. MOORE: Probably not too far.

THE COURT: All right. Thank you.

All right. Now, I believe, Mr. Moore, we had preliminary discussions in chambers regarding some concerns of your client. And if you're at liberty to voice those at this time, you may do so if you so desire.

MR. MOORE: Yes, Your Honor.

We have a business records affidavit and original business records or copies of business records from Ford Motor Company which constitutes raw data, and we think we can work that up to show -- well, it states that the 654 shares would have -- would have increased in number of shares to 2,288. And I think the current market price is about $65.

THE COURT: So you're taking -- so if I may summarize, if I may, for brevity sake -- and you correct me if I misstate you at all.

You're taking the position that the sale of the Ford stock which ultimately was traced into the proceeds of the sale or into the purchase price or construction price of the property located in Blue Springs -- should not have been sold, the stock would have yielded a stock split which would have increased --

MR. MOORE: And dividends.

THE COURT: -- would have increased the -- and ultimately increased the value of the stock due to the change in market subsequent to the split plus stock dividends.

MR. MOORE: And cash dividends, yes, sir.

THE COURT: Right, stock and cash dividends. All right.

And I believe you also voiced concern -- which is really not part of this particular settlement -- but concern over the burden of Ms. Overman's fees as administrator ad litem?

MR. MOORE: No. I think the concern I expressed was primarily on -- with regard to the burden of my fees on my client.

THE COURT: All right. Okay.

MR. MOORE: However -- however, of course, we --

THE COURT: I misunderstood you on that.

MR. MOORE: I think I might have also said something to the effect that I tended to agree with Ms. Overman that it would be -- it would be nice if we could come to a bottom line amount for Janice Campbell so we could be spared further --

THE COURT: That might be -- that might be something that could be visited subsequent to this hearing. All right.

Now --

MR. MOORE: Your Honor, I have another concern --

THE COURT: Go ahead.

MR. MOORE: -- with this report, and that is that we think we would come up with a radically different amount on No. 2. And -

THE COURT: The bank?

MR. MOORE: Yes, Your Honor.

THE COURT: All right. Well --

MR. MOORE: So I assume that we'll have a period of time --

THE COURT: Well --

MR. MOORE: -- which we might make suggestions or --

THE COURT: You certainly may make any suggestion that you wish to Ms. Overman as administrator ad litem of this estate has an independent duty to determine whether or not this case should be settled at this time since she is the representative of the two Campbell brothers and Ms. Janice Campbell; and that she is not required to follow this estate into a financial Armageddon and shoot craps as to what a jury might or might not award if in her judgment as an officer of the court she determines that this matter should be settled.

And I take it that your statement, Ms. Overman, to the Court is that you do recommend this settlement on that basis?

MS. OVERMAN: Yes, Your Honor. Specifically, I examined two issues that I felt were jury issues.

The first of which is the issue of the date of Joseph F. Campbell's incapacity. There has been evidence that would suggest that he may have been incapacitated certainly as early as 1983. I am familiar with the evidence that would be presented by the defendants in this action and believe that they may have contrary evidence, therefore resulting clearly in a jury issue.

The second jury issue that I have evaluated was the issue as to the sale of the Ford stock and whether or not there was damage resulting to the estate based on that sale. I also evaluated what the benefit was to the beneficiary Janice Campbell in the construction of that home and also the evidence that has already been adduced in court concerning the intention of the decedent and perhaps also his spouse with respect to the construction of that home.

I believe the jury would have an issue to determine on -- would have sufficient evidence to determine that issue. And trying to evaluate and weigh those issues and the cost involved in proceeding to the conclusion of a jury trial, I felt as though a compromise -- a reasonable compromise would be the compromise that I have proposed to the Court.

THE COURT: All right.

Here's -- the Court is going to approve your proposal as presented on this record. However, in order to make this matter very tidy and viable for anybody that has a problem with what the Court is doing, I would like for you to prepare this in the form of a judgment entry approving this as a settlement, which the Court will then, if it's consistent with what you told me here, will enter of record; and the judgment date will be that date and not today's date. So that any time for appeal, if that is decided, would run from the date that the formal judgment entry is entered, the paper judgment is entered.

Is that understood?

MR. MOORE: I understand, Your Honor.

THE COURT: All right.

MR. MOORE: Would that --

THE COURT: In the meantime, you can discuss with Ms. Overman your concerns and we'll go from there.

MR. MOORE: Would the Court entertain a request for an evidentiary hearing on the matter?

THE COURT: On what matter?

MR. MOORE: On the -- on the -- particularly on the Standard States checking account and other items of concern.

THE COURT: I think you better discuss that with Ms. Overman. You are, of course, free to file anything you wish to file, and I will entertain that and I will approach those in due course. Let me put it that way.

MS. OVERMAN: For --

THE COURT: I'm not saying yes or no.

MS. OVERMAN: For the record, Your Honor, I would be willing to examine any specific transactions Mr. Moore wishes me to examine. I have spent a great deal of time yesterday and today examining transactions. But certainly it's a complicated and long history of transactions, and I would be happy to look at any specific items he has in mind.

THE COURT: Right.

MS. OVERMAN: I will not be handed another box of bank records and told to ferret out something else, because I believe I have satisfied myself --

THE COURT: All right.

MS. OVERMAN: -- that I have ferreted out what is the obvious.

THE COURT: All right. Thank you. Okay.

This concludes the hearing at this time.

MR. WIGHT: Thank you, Judge.

oOo

IN THE CIRCUIT COURT OF JACKSON COUNTY
SIXTEENTH JUDICIAL CIRCUIT, PROBATE DIVISION

JANICE C. CAMPBELL	)	
	)	
Petitioner	)	
	)	
vs.	)	Case No. PR89-030836-01
	)	
JOSEPH E. CAMPBELL, et al.	)	
	)	
	)	
Respondents	)	
	)	
In the Estate of Joseph F. Campbell	)	Estate No. 30836
	)	
	)	
Deceased	)	

MOTION FOR MISTRIAL

COMES NOW Petitioner Janice C. Campbell and moves for mistrial and an order of the Court that the above-captioned cause be tried before a jury, for the reasons more fully stated in the suggestions in support hereof filed concurrently herewith and by this reference incorporated herein.

Albert W. L. Moore, Jr.
554 South Ash
Post Office Box 7800
Independence, Missouri 64053
(816) 254-6070
ATTORNEY FOR PETITIONER
JANICE C. CAMPBELL

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing motion for mistrial was mailed on this 6th day of February 1994 to Les D. Wight, Esq., 530 East 23rd Street, Independence, Missouri 64055, Attorney for Respondents, and to Rebbecca Lake Overman, Esq., 221 West Lexington, Independence, Missouri 64050, Administrator ad Litem.

_____

Albert W. L. Moore, Jr.
Attorney for Petitioner

IN THE CIRCUIT COURT OF JACKSON COUNTY
SIXTEENTH JUDICIAL CIRCUIT, PROBATE DIVISION

JANICE C. CAMPBELL	)	
	)	
Petitioner	)	
	)	
vs.	)	Case No. PR89-030836-01
	)	
JOSEPH E. CAMPBELL, et al.	)	
	)	
	)	
Respondents	)	
	)	
In the Estate of Joseph F. Campbell	)	Estate No. 30836
	)	
	)	
Deceased	)	

SUGGESTIONS IN SUPPORT OF MISTRIAL

COMES NOW Petitioner Janice C. Campbell and for her suggestions in support of her motion for mistrial states and shows the Court as follows:

1. The Court peremptorily discharged the jury in the midst of the Petitioner's presentation of her case. Denying a jury trial of this cause without Petitioner's express consent violates Article 1, Section 22(a) of the Constitution of the State of Missouri, which guarantees trial by jury.

2. Section 473.340,2 of the Revised Statutes of Missouri allows any party to demand a jury trial in an action to discover assets. The only reasonable interpretation of the right to demand a jury trial is that the demanding party actually receive a jury trial. Petitioner demanded a jury trial and in fact a jury trial proceeded for over two days before the Court discharged the jury. In the interim, Petitioner had established a prima facie case for the decedent's incapacity. Petitioner has been denied her right to a jury's determination of incapacity and to present to the jury for its decision a large body of evidence of transfers from the decedent's estate during the period of decedent's incapacity.

3. It is reversible error for a trial court to deny a jury trial demanded in a discovery of assets action (In re Estate of Fugett, 564 S.W.2d 628 (Mo.App., Kansas City District, 1978).

WHEREFORE, Petitioner prays this Court declare a mistrial and order a new trial of this cause before a jury as demanded by Petitioner.

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554 South Ash
Post Office Box 7800
Independence, Missouri 64053
(816) 254-6070

ATTORNEY FOR PETITIONER
JANICE C. CAMPBELL

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing suggestions in support of motion for mistrial was mailed on this 6th day of February 1994 to Les D. Wight, Esq., 530 East 23rd Street, Independence, Missouri 64055, Attorney for Respondents, and to Rebbecca Lake Overman, Esq., 221 West Lexington, Independence, Missouri 64050, Administrator ad Litem.

_____

Albert W. L. Moore, Jr.
Attorney for Petitioner

IN THE CIRCUIT COURT OF JACKSON COUNTY
SIXTEENTH JUDICIAL CIRCUIT, PROBATE DIVISION

JANICE C. CAMPBELL	)	
	)	
Petitioner	)	
	)	
vs.	)	Case No. PR89-030836-01
	)	
JOSEPH E. CAMPBELL,	)	
et al.	)	
	)	
Respondents	)	
	)	
In the Estate of	)	Estate No. 30836
Joseph F. Campbell	)	
	)	
Deceased	)	

OBJECTIONS TO PROPOSED SETTLEMENT

COMES NOW Petitioner Janice C. Campbell by her attorney Albert W. L. Moore, Jr., and for her objections to the proposed settlement from the Administrator ad Litem states and shows the Court as follows:

1. These objections are without prejudice to Petitioner's pending motion for mistrial in the above-captioned case. The Court's precipitate and appalling discharge of the jury in the midst of Petitioner's presentation of her case denies her the jury trial duly demanded by her under Section 473.340.2 of the Revised Statutes of Missouri and guaranteed by Article 1, Section 22(a) of the Constitution of the State of Missouri. The implementation of Section 473.085 of the Revised Statutes of Missouri requires "an agreement in writing ... executed by all competent persons ... having beneficial interests ...." Petitioner has not executed any such agreement in writing, or concurred in any agreement of any kind. Petitioner has not waived her tight to a jury trial, and continues to demand and insist upon the same. The purpose of these objections is simply to inform the Court.

2. Petitioner objects to the making of any settlement proposal by the Administrator ad Litem. The Administrator ad Litem has never been joined as a party to the action; hence she has no standing to participate in the trial or to propose settlement.

3. The settlement proposal suppresses recovery by the estate and discriminates against Petitioner; it is therefore contrary to the fiduciary obligations of the Administrator ad Litem to collect the entire estate and to treat all beneficiaries fairly and impartially.

4. The Administrator ad Litem takes August 1983 as the beginning date of decedent's incapacity. The evidence shows that decedent became incompetent at least as early as the first of April 1983. Hence transfers from this date must be returned to the estate.

5. Salient items of the Administrator ad Litem's proposal are analyzed below. The effective rates in the proposal vary widely, to the benefit of the Respondents and to the detriment of Petitioner and the estate. Here, as throughout the trial, the Administrator ad Litem is tantamount to co-counsel for Respondents. All calculations in these objections are at 9% annum compounded monthly. The calculation herein may be stated at a different rate, but the same should apply to all.

6. The first item of the Administrator ad Litem's proposal is the return to the estate of Lot 8, Sandalwood, Blue Springs, Missouri. Some $61,000 of the decedent's money went into the purchase of that property in March of 1986. About $47,000 came from the sale of 654 shares of decedent's Ford Motor Company common stock; the remaining $14,000 came from other funds of decedent. Reverse amortization of these amounts at the 9% legal rate of interest, compounded monthly, produces a present value of $28,900.00 plus $97,021.53, or $125,921.53 (Tab 1). To the extent sales proceeds from the realty fall short of the $125,921.53 figure, Joseph E. Campbell should be additionally charged with the difference as an injury to the estate from his use of estate money to purchase realty.

7. The second item of the Administrator ad Litem's proposal is Standard State Bank Checking Account 200 243 4. This account was apparently funded entirely with the decedent's money. Joseph E. Campbell wrote 788 checks against this account from 1983 to decedent's death on the twenty-first of October 1987. Of the 788 checks, at least 527 are questionable. Photocopies of the 527 are at Tab 2. In light of the checks shown at Tab 2, the amount of $4,022.09 adduced by the Administrator ad Litem is ludicrous. It can stem only from a strong bias in favor of Respondents. The annual sums of questionable checks shown at Tab 2 follow:

YEAR	TOTAL
1983	$13,529.92
1984	$19,203.15
1985	$13,979.24
1986	$5,234.39
1987	$4,390.44

To reach a present value, reverse amortizations were run on each of the annual totals from the last day of each respective year; the grand total is $125,876.13 (Tab 3). This is conservative, as additional transfers from the account were made after decedent's death.

8. The proposal fails to consider checks drawn by Respondent Joseph E. Campbell against Standard State Bank Money Market Account 600 958 1. This account appears to have been funded entirely by decedent's money during the period of his incapacity. The only signatory on the account was Respondent Joseph E. Campbell. Checks drawn against the account by Respondent Joseph E. Campbell include number 101 dated the twenty-fifth of October 1985 to Midland Bank (where Respondent Joseph E. Campbell banked) for $6,222.75 in respect of commercial loan #1022168, check number 102 for $1,650.00 dated the eleventh of November 1985 and payable to Midland Bank, check number 103 for $1,000.00 dated the twenty-ninth of November 1985 and payable to Standard State Bank, check number 104 for $1,000.00 dated the second of December 1985 and payable to Midland Bank, check number 105 for $7,000.00 payable to Midland Bank and dated the thirteenth day of March 1986, check number 106 dated the nineteenth of March 1986 for $500.00 to Midland Bank, check number 107 for $300.00 dated the twenty-fourth of March 1986 and payable to Midland Bank, check number 113 dated the fourteenth of April 1986 to Jackson National Life in the amount of $1,250.00 for an IRA contribution, check number 116 dated the sixteenth of March 1987 for $1,000.00 cash, check number 117 for $500.00 payable to Midland Bank and dated the twentieth of March 1987, check number 118 dated the eleventh of April 1987 and payable to Jackson National Life Insurance Co. for $2,250.00 for J. E. Campbell IRA accounts, check number 119 to Midland Bank for $500.00 dated the twenty-third of April 1987, check number 120 dated the first of June 1987 for $3,500.00 to Altronic, Inc. (Respondent Joseph E. Campbell's company) for the purchase of a Ford Bronco II (presumably the Ford Bronco II currently driven by Joseph E. Campbell and excluded from

the Administrator ad Litem's proposal). Copies of these checks were given to the Administrator ad Litem, but she ignored t m, as well as the items purchased by them, such as the Ford Bronco II and the IRA accounts. This is further evidence of her preferring the Respondents over her fiduciary obligations. The raw total of these checks comes to $26,672.75. The total present value of these past transfers, as shown by the reverse amortizations at Tab 4, is $54,185.82.

9. The proposal fails to take into account autos transferred to Joseph E. Campbell of a value, by his own admission, of $17,436.64 (1989 balance sheet from Roger J. Tilling, Petitioner's Exhibit 19, Tab 17 hereto). The present value of $17,436.64 transferred on the thirty-first day of December 1989 is about $25,716.13 (Tab 5).

10. With regard to Item 3 of the proposal, the present value of the $10,000.00 certificate of deposit distributed to Respondent Richard F. Campbell on the second day of May 1986, calculated under the uniform assumptions employed herein, is $20,336.70 (Tab 6).

11. Item 7 of the proposal sets a value of $1,500.00 on the 1973 Jeep transferred to Richard F. Campbell. Respondents, however, admit a value of $5,750.00 for automobiles (sic) transferred to Richard F. Campbell (1989 balance sheet at Tab 17). The Administrator ad Litem fails to add the considerable estate funds spent on the Jeep, which are among the questionable checks at Tab 3, on the absurd theory that the Jeep is coming back to the estate and without regard to the fact that Respondent Richard F. Campbell has enjoyed the use of the vehicle for many years. To the extent the current market value of the Jeep falls short of the estate expenditures on it, the estate has been damaged. The

proposal discriminates against Petitioner by charging her with interest on the alleged value of the Dodge she received while disregarding interest on the Jeep received by Respondent Richard F. Campbell. At Tab 7 appears a reverse amortization on the Jeep based on a conservative valuation of $2,500.00, which results in a present value chargeable to Respondent Richard F. Campbell in the amount of $6,703.23.

12. Item 12 of the Administrator ad Litem's proposal fails to add an interest factor to the Ford Motor Company dividend checks appropriated by Respondents to themselves. It also fails to specify the dates of the dividends so appropriated. This information is necessary to calculate the present value of the dividends taken by Respondents. It is also necessary to account for all of the approximately 45 Ford dividends paid since 1982, in order to confirm that the amounts specified in item 12 are correct.

13. Item 13 of the Administrator ad Litem's proposal, on rent paid to Petitioner, should be rejected. On no fewer than three occasions, Respondents pointed out to the Court that the rent was paid to Petitioner to compensate her for the expenditure if estate funds purportedly on 1928 Ash (Tab 8). The Administrator ad Litem's proposal would charge Petitioner for the rent, plus interest, without charging Respondents for the countervailing expenditures or for interest on them. Moreover, the effective rate used to calculate interest in item 13 of the proposal is nearly twice that used to calculate interest on monies charged against Respondents - further evidence of the Administrator ad Litem's bias in this matter. A proper calculation of interest, on the uniform principles applied herein, appears at Tab 9.

Petitioner does not concede, however, that the rent should be returned, given the Respondents' representations in the filings at Tab 8.

14. The calculation of interest on item 14 of the proposal, on the uniform basis utilized herein, appears at Tab 10. The present value comes out to $21,428.70, chargeable to Respondents.

15. It is erroneous to suggest that Petitioner received a $10,000.00 certificate of deposit, as the Administrator ad Litem does in item 15 of her proposal. Both of Petitioner's certificates of deposit were turned in. Respondent Joseph E. Campbell did obtain a Dodge for Petitioner, which he turned over to her after driving it himself for two months. He assigned a value to that vehicle of $6,929.69 on the 1989 balance sheet comprising part of Petitioner's Exhibit 19, the Tilling report (Tab 17). Taking the $10,000.00 now claimed as the value of the Dodge, however, the present value as calculated on the uniform basis used herein appears at Tab 11. It comes to $23,264.38

16. As to item 16 of the proposal, the present value is $20,642.90, chargeable to Joseph E. Campbell; see Tab 12.

17. As to item 17 of the proposal, the present value is $24,513.58, chargeable to Respondent Richard F. Campbell; see Tab 13.

18. As to item 18 of the proposal, the present value is $21,589.42, chargeable to Respondent Richard F. Campbell; see Tab 14.

19. The Administrator ad Litem's proposal fails to include the great damage done to the estate by the sale of 654 shares of Ford Motor Company common stock in March of 1986. A three-for-one [sic] stock split (or 50% stock dividend) occurred on the second of June 1986; this would have added 327 more shares. A two-for-one stock split occurred on the twelfth of January 1988; this would have added another 981 shares (654 + 327 = 981) for a total of 1,962 shares. These would have been in addition to the 980 shares in the estate stemming from the 327 shares not sold (327 + 163 + 490 = 980). Had the 654 shares not been sold, the estate would have had 2,942 shares (1,962 + 980 = 2,942) instead of the 980 shares currently held by the Administrator ad Litem. At a market value of $65.00 per share, the additional 1,962 shares would be worth $127,530. Hence the estate has been damaged to the tune of $80,530.00 ($127,530.00 - $47,000.00 proceeds of the sale of 654 shares = $80,530.00). See Tab 15. Moreover, the estate lost the dividends that would have been paid on the 1,962 shares. See the calculation of the present value of lost dividends at Tab 16. It amounts to $46,570.47. Hence the total damage to the estate from the sale of the Ford stock is $127,100.47 ($80,530.00 + $46,570.47 = $127,100.47). There is no double counting of damages, for the $47,000.00 in proceeds from the sale has been deducted in the foregoing computations. The subsequent misappropriation of the $47,000.00 is discussed in paragraph 6 above.

20. The settlement proposal fails to take into account $2,000.00 in appreciation on the lake shore property sold in 1984. The proceeds of sale are traced into certificates of deposit treated above.

21. The proposal fails to take into account some $60,000.00 in legal expenses incurred by Petitioner to bring Respondents to the point of a settlement proposal, however flawed. Respondents' tactics have been aimed at running up Petitioner's legal costs; Respondents, not Petitioner, should bear the burden of such nonsense. Petitioner's legal costs incurred on behalf of the estate more than offset amount allegedly chargeable to her.

22. In summary, the Respondents should return at least the following to the estate:

Blue Springs realty	$75,000.00
Excess of injury to the estate, from expenditure of $61,000.00 on Blue Springs realty, over current value of realty	$50,921.53
Present value of questionable checks drawn against Standard State Bank Account 200 243 4	$125,876.13
Present value of questionable checks drawn against Standard State Bank Account 600 958 1	$54,185.82
Present value of automobiles transferred to Joseph E. Campbell	$25,716.13
Present value of certificate of deposit #890076	$20.336.70
Present value of Jeep assuming a value of $2,500.00	$6,703.23

Present value of certificate of deposit #10510	$21,428.70
Present value of certificate of deposit #12825	$20,642.90
Present value of certificate of deposit #13443	$24,513.58
Present value of certificate of deposit #10859	$21,589.42
Present value of 1,962 shares that should be in the estate, less $47,000.00 proceeds of sale of 654 shares	$80,530.00
Present value of dividends lost by sale of 654 shares	$46,570.47
Cash dividends appropriated by Respondents	$7,350.00
Appreciation of lake shore property sold in 1984	$2,000.00
	$583,364.61

The foregoing comments and objections are without prejudice to Petitioner's right to assign other and additional loss and damage to the estate. In particular, the full extent of checks written and the present value of cash dividends appropriated by Respondents remain open.

WHEREFORE, Petitioner prays this Court reject the spurious proposal of the Administrator ad Litem and correct its error in precipitately and unlawfully discharging the jury by setting a date for the trial of this cause by a duly selected jury.

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554 South Ash
Post Office Box 7800
Independence, Missouri 64053
(816) 254-6070
ATTORNEY FOR PETITIONER
JANICE C. CAMPBELL

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing objections to proposed settlement was mailed on this 8th day of February 1994 to Les D. Wight, Esq., 530 East 23rd Street, Independence, Missouri 64055, Attorney for Respondents, and to Rebbecca Lake Overman, Esq., 221 West Lexington, Independence, Missouri 64050, Administrator ad Litem.

Albert W. L. Moore, Jr.
Attorney for Petitioner

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
PROBATE DIVISION AT INDEPENDENCE

JANICE C. CAMPBELL,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. PR89-030836-01
	)	Estate No. 30836
JOSEPH E. CAMPBELL, et al.,	)	
	)	
Respondents,	)	
	)	
In the Estate of Joseph F. Campbell,	)	
	)	
Deceased.	)	

JUDGMENT ENTRY

On the 27th day of January, 1994, this Court took up the oral motion of Rebbecca Lake Overman, administrator ad litem, to compromise and settle the claims arising from Plaintiff's Second Amended Petition to Discover Assets and Defendants' Cross-Petition to Discover Assets; and having heard the evidence and being advised in the premises the Court took this matter under advisement pending the furnishing of a judgment entry.

Now on this 2 day March, 1994, this Court again takes up the Administrator ad Litem's motion and makes the following findings of fact:

Between August 1, 1983 and October 21, 1987 the decedent, Joseph F. Campbell, transferred certain assets into the names of one or more of the parties.

There exists an issue of fact as to whether the decedent was totally incapacitated as a result of Alzheimer's disease and unable to make decisions regarding disposition of his assets from his entry into a nursing home in 1983 until his death on October 21, 1987.

The Administrator ad Litem reasonably believes that during the period of his incapacity, the decedent with assistance from the Defendants sold 654 shares of stock in Ford Motor Co. Inc. and used the proceeds from said sale to have a home built on Lot 8, SANDLEWOOD [SIC] ADDITION in Blue Springs, Missouri for the purpose of providing a residence for the plaintiff.

Plaintiff Campbell asserts that the 654 shares of Ford Motor Company stock should not have been sold and that had said stock not been sold, the estate would be entitled to the appreciation in the value of the stock due to stock splits and an increased market value and the dividends that would have been paid from the date of sale to the date of trial.

The Administrator ad Litem reasonably believes that during the period of the decedent's incapacity the plaintiff received $16,800.00 in rental income from the decedent's real property at 1928 1/2 Ash Street in Independence, Missouri.

The Administrator ad Litem reasonably believes that during the period of his incapacity the decedent with assistance from the Defendants transferred three certificates of deposit totalling $30,000 into the name of defendant, Richard Campbell.

The Administrator ad Litem reasonably believes that during the period of his incapacity the decedent with assistance from the Defendants transferred two certificates of deposit into the name of defendant, Joe E. Campbell.

The Administrator ad Litem reasonably believes that during the period of his incapacity the decedent with assistance from the Defendants transferred one certificate of deposit into the name of plaintiff, Janice Campbell.

The Administrator ad Litem reasonably believes that during the period of the decedent's incapacity the defendant's [sic] paid to themselves or others for their exclusive benefit certain monies from the decedent's checking account. Defendant, Richard Campbell received $2,244.26 and defendant, Joe E. Campbell received $1,777.21 from said account.

The Administrator ad Litem reasonably believes that during the period of the decedent's incapacity the plaintiff took possession of a 1967 Motorcycle, a 1968 seventeen foot Silvereagle trailer, a 1967 Mark Twain 120 horsepower boat, and a homemade frame trailer.

The Administrator ad Litem reasonably believes that during the period of the decedent's incapacity, the defendant, Richard Campbell took possession and title to a 1973 Jeep CJ5 and a homemade trailer.

The Administrator ad Litem reasonably believes that during the period of the decedent's incapacity, the defendant, Joe E. Campbell took possession and title to a 1970 Ford wagon engine.

The Administrator ad Litem reasonably believes that following the death of the decedent, defendant, Richard Campbell received $1,813.00 in proceeds from certain dividends from Ford Motor Co. Inc. which were in the decedent's name alone.

The Administrator ad Litem reasonably believes that following the death of the decedent, defendant, Joe E. Campbell received $5,537.00 in proceeds from certain dividends from Ford Motor Co. Inc. which were in the decedent's name alone.

The Administrator ad Litem reasonably believes that further litigation of the disputed issues is not likely to result in any additional advantage to the estate and is not economically feasible.

The Administrator ad Litem recommends that the following assets be found to be assets of the Estate of Joseph F. Campbell:

> Lot 8, SANDLEWOOD [sic] Addition, a subdivision in Blue Springs, Jackson County, Missouri.
>
> Refund from Richard Campbell in the sum of $4,244.26 to Standard State Checking Account # 2002434.

Refund from Joe E. Campbell in the sum of $1,777.21 to Standard State Checking Account # 2002434.

Refund from Richard Campbell in the sum of $10,000.00 plus interest at the rate of 6.5% in the sum of $5,037.50 for prior distribution of C. D. #890076 at Standard State Bank.

Refund from Richard Campbell in the sum of $10,000.00 plus interest at the rate of 6.5% in the sum of $6,337.50 for prior distribution of C. D. #13443 at Standard State Bank.

Refund from Richard Campbell in the sum of $10,000.00 plus interest at the rate of 6.5% in the sum of $4,820.83 for prior distribution of C. D. #10859 at Standard State Bank.

Refund from Joe E. Campbell in the sum of $10,000.00 plus interest at the rate of 6.5% in the sum of $5,200.00 for prior distribution of C. D. #12825 at Standard State Bank.

Refund from Joe E. Campbell in the sum of $10,000.00 plus interest at the rate of 6.5% in the sum of $5,416.66 for prior distribution of C. D. #10510 at Standard State Bank.

Refund from Janice Campbell in the sum of $10,000.00 plus

interest at the rate of 6.5% in the sum of $6,012.50 for prior distribution of C. D. #10881 at Standard State Bank.

Return from Janice Campbell of 1967 Motorcycle valued at $100.00, a 1968 17 foot Silvereagle trailer valued at $150.00, a 1967 Mark Twain 120 horsepower boat valued at $150.00, and a homemade frame trailer valued at $200.00.

Return from Joe E. Campbell a 1970 Ford Wagon engine valued at $200.00.

Refund from Janice Campbell of $750.00 from proceeds from sale of household goods.

Refund from Richard Campbell of $175.00 for value of household goods previously distributed to him.

Refund from Joe E. Campbell of $75.00 for value of household goods previously distributed to him.

Refund from Richard Campbell of $1,813.00 for proceeds from Ford Motor Co. Inc. stock dividends plus interest accrued at the rate of 3% in the sum of $108.00.

Refund from Joe E. Campbell of $5,537.00 for proceeds from Ford Motor Co. Inc. stock dividends plus interest accrued at the rate of 3% in the sum of $332.22.

Refund from Janice Campbell of $16,800.00 for proceeds of rental income from real property located a [sic] 1928 1/2 Ash Street, Independence, Missouri plus interest at the rate of 6.5% in the sum of $4,290.45.

The settlement proposed by the Administrator ad Litem appears to fairly affect the rights of all parties, is a reasonable compromise of the controversy, and is in the best interest of the estate.

The Defendants have consented to the settlement offered by the Administrator ad Litem.

NOW, THEREFORE IT IS ORDERED, ADJUDGED, AND DECREED that the settlement offered by the Administrator ad Litem be and it is hereby accepted as a fair and reasonable compromise of the controversy raised in Plaintiff's Second Amended Petition to Discover Assets and the Defendants' Cross-Petition to Discover Assets.

IT IS FURTHER ORDERED that Rebbecca Lake Overman, in her capacity as Administrator ad Litem for the Estate of Joseph F. Campbell have and recover from Joe E. Campbell certain real property legally described as Lot 8, SANDLEWOOD [sic] ADDITION, a subdivision in Blue Springs, Jackson County, Missouri, the 1970 Ford Wagon engine and the sum of $38,338.09, or attribute the fair market value of said property as a set off to Joe E. Campbell's distributive share of the estate, and in default thereof let execution issue.

IT IS FURTHER ORDERED that Rebbecca Lake Overman, in her capacity as Administrator ad Litem for the Estate of Joseph F. Campbell have and recover from Richard Campbell the sum of $50,536.09, the 1973 Jeep CJ5 automobile, and the 1954 homemade trailer, or attribute the fair market value of said property as a set off to Richard Campbell's distributive share of the estate, and in default thereof let execution issue.

IT IS FURTHER ORDERED that Rebbecca Lake Overman, in her capacity as Administrator ad Litem for the Estate of Joseph F. Campbell have and recover from Janice Campbell the sum of $37,852.95, the 1967 motorcycle, the 1968 17 foot Silvereagle trailer, the 1967 Mark Twain 120 horsepower boat and the homemade trailer frame [sic], or attribute the fair market value of said property as a set off to Janice C. Campbell's distributive share of the estate, and in default thereof let execution issue.

IT IS FURTHER ORDERED that each party will bear their [sic] own costs of the action.

HONORABLE JOHN A. BORRON, JR.

IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT

In the Estate of:	)	
	)	
JOSEPH F. CAMPBELL,	)	W.D. No. 49245
	)	
Deceased.	)	

IN THE JACKSON COUNTY CIRCUIT COURT
SIXTEENTH JUDICIAL CIRCUIT, DIVISION 19
Honorable John A. Borron, Jr., Judge

In the Estate of:	)	
	)	
JOSEPH F. CAMPBELL,	)	Cause No.
	)	PR94-030836-05
Deceased.	)	

TRANSCRIPT ON APPEAL

APPEARANCES:

Ms. Rebbecca Lake Overman
Attorney at Law
221 West Lexington, Suite 250
Independence, Missouri 64050
For: Petitioner/Administrator ad Litem

Mr. Albert W. L. Moore, Jr.
Attorney at Law
554 South Ash
Independence, Missouri 64053
For: Respondent Janice C. Campbell

Mr. Les D. Wight II
Attorney at Law
13921 Murkins Road
Kansas City, Missouri 64190
For: Respondents Richard and Joseph Campbell

(March 17, 1994)

THE COURT: The next matter to be taken up is a petition for order to sell personal property in the Estate of Joseph F. Campbell, Deceased, wherein the Administrator ad Litem -- or D.B.N.? Ad Litem?

MS. OVERMAN: Ad Litem.

THE COURT: -- Ad Litem is Petitioner and the heirs of the estate are Respondents. Will counsel -- Will Petitioner please enter her appearance?

MS. OVERMAN: Rebbecca Lake Overman --

THE COURT: And will --

MS. OVERMAN: -- Administrator ad Litem.

THE COURT: And will counsel for Janice Campbell please enter his appearance?

MR. MOORE: Albert W. L. Moore, Jr., 18921.

THE COURT: And will counsel for the sons please enter his appearance?

MR. WIGHT: Les Wight appearing with both Richard and Joseph Campbell, Your Honor.

THE COURT: Thank you. And this has been designated as File Proceeding No. PR94-030836-05.

Ms. Overman, you may proceed.

MS. OVERMAN: Your Honor, the testimony I have today is of my own. If the Court pleases, I'll take the witness stand and --

THE COURT: It does.

MS. OVERMAN: -- try not to narrate in too boring a manner.

(Witness sworn)

THE CLERK: Please be seated.

REBBECCA LAKE OVERMAN appeared as a witness on behalf of the ADMINISTRATOR AD LITEM, being duly sworn, testified as follows:

DIRECT TESTIMONY BY WITNESS OVERMAN:

THE WITNESS: My name is Rebbecca Lake Overman. I'm the Administrator ad Litem of Joseph F. Campbell. I filed with the Court a petition to sell personal property, specifically seeking authorization for the sale of certain shares of Ford Motor Company stock and --

THE COURT: Just a minute, please. Off the record a minute.

THE COURT: Proceed.

THE WITNESS: I closed up my file, so now I can't find my -- Oh. My motion is filed here -- specifically, 980 shares of Ford Motor Company stock held in the estate. The purpose for which I seek to -- to liquidate this stock is that there are presently no liquid assets in this estate. The only assets within my present control are the shares of Ford Motor stock --

THE COURT: Go ahead.

THE WITNESS: -- and certain parcels of real property located in Independence, Jackson County, Missouri. I have reviewed the parcels of real estate, and they are not in immediate condition for sale.

There -- there are sufficient -- or substantial claims filed in the estate and expenses of administration that have occurred during the pendency of my administration, not limited to the attorney's fees that I will be seeking to be paid, as well as other expenses of administering the estate.

Additionally, there are no liquid funds from which to manage the real property. To date, the real property has been managed by payment of advances from the Campbell brothers --

THE COURT: Go ahead.

THE WITNESS: Okay -- who are now seeking to be refunded for the amounts that they have advanced to pay utility bills and other expenses of maintaining the real property, which the Court may note that I have under control under authorization. Seeing as how the only -- or the only assets immediately available to liquidate is the Ford Motor stock, I'm seeking to have that done.

THE COURT: All right. Any questions, Mr. Moore?

MR. MOORE: Yes, Your Honor.

CROSS EXAMINATION BY MR. MOORE:

Q. Can you tell us what claims you propose to pay with proceeds of the sale?

A. Well, I expect that I'll be filing a motion for attorney's fees. I'm anticipating a claim or a request for refund for expenditures to be delivered to me by Mr. Wight on behalf of his clients. There may be some other -- I don't have the entire probate estate up here with me. But I -- As I understand it from having reviewed the file, there are other claims that may have been filed.

Q. You were -- You were served with a claim for legal expenses for Janice Campbell's counsel; were you not?

A. Yes.

Q. What -- what are the other claims in addition to that? Can you give us the amounts of the claims that you -- you propose to pay from the proceeds of the sale of the stock?

A. Not right now.

Q. And can you tell us what the expenses of administration are that you need pay from the proceeds of that sale?

A. Well, I anticipate filing with the Court an attorney's fee application that is around $4,500. Additionally, this estate is up to another year and is going to need to have an annual settlement prepared. And there will be court costs. I don't know what the exact amount of those costs are, but there will be court costs due at that time.

Q. When is the annual settlement due?

A. I don't know, Mr. Moore. You know this as well as I do. It's in the Court's file. I mean, it's been more than a year since a settlement was filed, so it's overdue. I don't know the exactly date off the top of my head.

Q. Included in the assets of the estate would be a judgment that has been rendered on March 2 for a return of certain property; is that correct?

A. Well, those assets are not currently in my control.

Q. But those assets could be reached by -- by execution or levy; could they not?

A. At such time as the order becomes final.

Q. What are the expenses and claims that must be paid prior to that time?

A. Prior to what time?

Q. Prior to the time the judgment becomes final.

A. Well, I'm not sure I understand your question. The purpose in my seeking to sell the personal property is to have funds on hand to pay ongoing expenses, including utility bills that -- that occur every month for the real estate, which include the necessary maintenance on those properties; that will include an application for attorney's fees for me; that will include the -- the annual court costs that are due.

Q. What if -- what if the total claims against this estate exceed the assets currently in -- in the control of the Court?

A. Well, I -- I don't understand your question. First of all, I think that's speculative. I don't think that it's at all likely that the claims will exceed the total assets in the estate. You mean the assets that are within my control currently or under the proposed order?

If you are speaking of -- of total assets under the proposed order, I think it's exceedingly unlikely that the claims would exceed the total assets. Since the non-claim statute has run, all of the claims are fixed, other than costs of administration.

Q. Is there any prospect of selling the -- the real estate on Ash?

A. Certainly moot at this time. You've seen those properties as well as I have. They're not in marketable condition. It -- The real estate market in Independence is such that I would anticipate it would probably take at least five or six months before we would have a sale, perhaps even longer. And I don't see that it's realistic to -- to take that as the primary asset to liquidate to pay expenses.

Q. Do you -- Can you give us an idea of what the continuing cost to the estate has been from holding on to the real estate on Ash?

A. Well, there are the ongoing utility expenses. They're not substantial, but they come due every month. And if they aren't kept paid, then there is substantial damage likely to occur to the property. But the expenses on the -- on the two parcels of property, in my estimate, are going to be in a range of about $200 a month just to maintain basic utilities. That would be an absolute minimum.

Q. Can you tell us what has been done with the dividends paid on the Ford stock over the last year or so?

A. Well, I haven't received any dividends since my administration.

Q. When did your administration begin?

A. Well, I think that's in the court file. If you want me to take the time to look it up, I certainly can.

THE COURT: I don't.

BY MR. MOORE:

Q. Well, you've been -- you've been in that position for -- for approximately a year; have you not?

A. I haven't looked at the file, but that certainly sounds close enough to me.

Q. And you've received no dividends from --

A. That's --

Q. On the Ford stock?

A. That's correct.

Q. Do you have any idea what's been done with the dividends?

THE COURT: What is this? This is not an objection to a -- to a settlement, Mr. Moore. What -- What -- She was put in to insulate the interested parties in this action -- in the discovery of assets action. I presume that the accounting and the -- and the dividends have been flowing to the Campbell brothers and that they could account for the dividends. And so, she's not handling -- has not handled any money up till -- up till the point of this settlement. I don't think she's had physical possession of any funds whatsoever.

MR. MOORE: Well, Your Honor, one reason for the -- for the sale is a lack of liquid funds.

THE COURT: That's right.

MR. MOORE: And so, we --

THE COURT: But you've got to remember you can't rely on this judgment as available assets. If the judgment is appealed, it is not a final judgment. So,you're -- you're wasting your time there.

Let's change tapes, please.

THE CLERK: On the record.

THE COURT: Furthermore, in the sale of Personal property, the -- the heirs don't have any right to pick an choose about what assets are going to be sold or not sold in an intestate estate or in a -- Is this a testate or intestate?

MR. MOORE: This is a testate estate, Your Honor.

THE COURT: All right.

THE WITNESS: It --

THE COURT: Is the stock specifically bequeathed?

THE WITNESS: No.

MR. MOORE: No.

THE COURT: All right.

THE WITNESS: It's a rest, residue, and remainder distribution --

THE COURT: All right.

THE WITNESS: -- amongst all four --

THE COURT: So there's no --

THE WITNESS: -- three heirs.

THE COURT: So there's no particular prohibition for selling personal property.

MR. MOORE: Well, Your Honor, I suggest that this is -- This is a -- It is premature to -- to sell the --

THE COURT: All right. All right. Are you through with your examination of Ms. Overman?

MR. MOORE: No. Not --

THE COURT: Well, then --

MR. MOORE: Not quite, Your Honor.

THE COURT: Well, then finish it.

MR. MOORE: I have -- I have a few more questions.

BY MR. MOORE:

Q. Mrs. Overman, the judgment handed down by the -- by the Court on the second of March is in favor of the Administrator ad Litem; is it not?

A. Yes.

Q. And so, only the Administrator ad Litem can -- can move to enforce that judgment; is that correct?

A. Well, I don't know, Mr. Moore. I've been practicing law a little bit less time than you have. And I think this is absolutely the silliest question I've heard in years.

THE COURT: Is that -- Is that an objection --

MS. OVERMAN: I object.

THE COURT: -- to relevancy?

MS. OVERMAN: Yeah. I'm sorry, Judge.

THE COURT: Sustained.

MS. OVERMAN: I object. It's irrelevant. And I'm getting frustrated.

MR. MOORE: Your Honor, I -- I suggest it has to do with -- with the principle of marshaling, that the -- the --

THE COURT: The objection has been sustained.

BY MR. MOORE:

Q. Mrs. Overman, do you -- do you have the share certificates?

A. Yes.

Q. And do you -- Do you control the -- the estate's bank account?

A. There is no money in the estate bank account. There was an estate account that was delivered over to me by the Brothers Campbell when I took over administration. At that point, there was 67 cents in the account.

Q. And since then, no -- no money has been deposited to that account?

A. No, Mr. Moore. There has not been any money deposited in the account.

MR. MOORE: Thank you.

THE COURT: Mr. Wight, any questions?

MR. WIGHT: A couple, your honor.

CROSS-EXAMINATION BY MR. WIGHT:

Q. Has it been conveyed to you that Richard and Joseph Campbell have authorized, by their agreement, the sale of such shares of Ford Motor stock as are necessary for the use in the estate and that the suggested a price of $67 per share?

A. That's my understanding.

Q. And do you understand that their -- their desire and request is that not all the shares be liquidated at one time on the possibility of future events and dividends and so forth that might benefit the estate?

A. I understand --

MR. WIGHT: All right. That's --

THE WITNESS: I was going to say, I understand that's their desire.

MR. WIGHT: That's all I have, Judge.

THE COURT: Okay. No questions. Further evidence, Ms. Overman?

MS. OVERMAN: No, Your Honor.

THE COURT: Do you have relevant evidence, Mr. Moore?

MR. MOORE: Your Honor, I hope it's relevant. I have an expert to testify on the -- on the Ford stock.

THE COURT: What do you mean on the Ford stock?

MR. MOORE: On the -- On the prudence of -- of holding the Ford stock as opposed to --

THE COURT: Well --

MR. MOORE: -- disposing of it, Your Honor.

THE COURT: I'm not going to permit that witness to testify. It's not relevant. And do you have any other evidence?

MR. MOORE: No, Your Honor. I think the -- the -- We do have evidence in the -- in the record pertaining to --

THE COURT: I assume your expert would testify that the Ford Motor Company is a strong company, is --

MR. MOORE: Yes, Your Honor. And the --

THE COURT: Just -- Just let me finish, please.

MR. MOORE: Yes, Your Honor.

THE COURT: -- that it's a strong company, that the market is strong, that the prognostication is that the stock will maintain or increase in value and/or dividend productivity and that sort of thing. Is that -- is that the nature of his -- would have been his testimony?

MR. MOORE: That would be part of it, Your Honor. He would also, I believe, verify the -- the amounts paid in dividends by -- on the Ford Motor Company stock, which --

THE COURT: That's a matter of accounting between the Brothers Campbell and Ms. Overman.

MR. MOORE: Well, Your Honor, as -- as a party -- as a party in interest, I would think it would be a matter of interest for Janice Campbell as well because --

THE COURT: That's a matter of accounting. They were the former fiduciaries. They must account to Ms. Overman. That has not been done. And that will be ordered right now. And there will be an accounting. So, Mr. Wight, you can arrange to have a final settlement over from -- from the Brothers Campbell -- I forget your names. Sorry -- to Ms. Overman within thirty days of this date.

That will then give Ms. Overman standing to determine the propriety of an accountability and will allow her to file objections to that settlement if objections are appropriate.

MR. MOORE: Well, Your Honor, if it -- if it turns out that there should be liquid assets that -- that have not been accounted for, then -- then I suggest it's premature to -- to decide now to sell the stock.

THE COURT: I don't think that -- I don't think that this is relevant. You have -- Your client has no specific right to any specific piece of property in this estate. And so, what I'm going to do is allow the -- I'm going to allow the -- the order of sale and let Ms. Overman decide on when and if she should sell the stock. MR. MOORE: Well, we -- We note the -- the Court's decision and -- and object on both legal and --

THE COURT: I --

MR. MOORE: -- evidentiary grounds that we've not --

THE COURT: I understand, sir.

MR. MOORE: -- been permitted to present.

THE COURT: Ms. Overman, do you have an order?

MS. OVERMAN: There should be one in the file, Judge.

THE COURT: I don't know which file it's in here. Oh, here it is.

MS. OVERMAN: I understand. I have as much --

THE COURT: Oh, here it is. I'm sorry.

MS. OVERMAN: -- trouble with mine anymore.

THE COURT: Here it is.

oOo

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
PROBATE DIVISION AT INDEPENDENCE

JANICE C. CAMPBELL,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. PR94-030836-05
	)	Estate No. 30836
JOSEPH E. CAMPBELL, et al.,	)	
	)	
	)	
Respondents,	)	
	)	
In the Estate of Joseph F. Campbell,	)	
	)	
	)	
Deceased.	)	

ORDER TO SELL PERSONAL PROPERTY

The petition of the administrator ad litem of the above estate fur [sic] authority to sell personal property belonging to said estate coming on for consideration, and it appearing to the court that the sale thereof is in the best interests of the estate, it is

ORDERED THAT SAID PROPERTY, TO-WIT: 980 shares of Ford Motor Company stock, certificate numbers ZQSD 0489087 dated December 1, 1983, ZQSD 0661779 dated June 2, 1986 and ZQSS 0199533 dated January 12, 1988, be sold, on the most advantageous terms obtainable, at public sale for cash.

_____
Judge John A. Borron, Jr.

Dated: 3/17/94

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
PROBATE DIVISION AT INDEPENDENCE

JANICE C. CAMPBELL	)	
	)	
Petitioner	)	
	)	
vs.	)	Case No. PR89-030836-01
	)	Estate No. 30836
JOSEPH E. CAMPBELL, et al.	)	
	)	
Respondents	)	
	)	
In the Estate of Joseph F. Campbell	)	
	)	
Deceased	)	

MOTION FOR NEW TRIAL

COMES NOW Petitioner Janice C. Campbell and moves for a new trial and an order of the Court that the above-captioned cause be tried before a jury, for the reasons more fully stated in the suggestions in support hereof filed concurrently herewith and by this reference incorporated herein.

Albert W. L. Moore, Jr.
554 South Ash
Post Office Box 7800
Independence, Missouri 64053
(816) 254-6070
ATTORNEY FOR PETITIONER
JANICE C. CAMPBELL

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing motion for a new trial was mailed on this 23rd day of March 1994 to Les D. Wight, Esq., 530 East 23rd Street, Independence, Missouri 64055, Attorney for Respondents, and to Rebbecca Lake Overman, Esq., 221 West Lexington, Independence, Missouri 64050, Administrator ad Litem.

_____

Albert W. L. Moore, Jr.
Attorney for Petitioner

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
PROBATE DIVISION AT INDEPENDENCE

JANICE C. CAMPBELL	)	
	)	
Petitioner	)	
	)	
vs.	)	Case No. PR89-030836-01
	)	Estate No. 30836
JOSEPH E. CAMPBELL, et al.	)	
	)	
	)	
Respondents	)	
	)	
In the Estate of Joseph F. Campbell	)	
	)	
	)	
Deceased	)	

SUGGESTIONS IN SUPPORT OF NEW TRIAL

COMES NOW Petitioner Janice C. Campbell and for her suggestions in support of her motion for a new trial states and shows the Court as follows:

1. The Court erred in peremptorily discharging the jury in the midst of Petitioner's presentation of her case. Denying a jury trial of this cause without Petitioner's express consent violates Article 1, Section 22(a) of the Constitution of the State of Missouri, which guarantees trial by jury. Section 473.340.2 of the Revised Statutes of Missouri allows any party to demand a jury trial in an action to discover assets. Petitioner duly demanded a jury trial on the thirteenth of September 1993. Petitioner was denied a decision by a jury; instead, decision was relegated to a claque of lawyers working for Respondents. It is reversible error for a trial court to deny a jury trial demanded in a discovery of assets action (In re Estate of Fugett, 564 S.W.2d 628 (Mo.App., Kansas City District, 1978).

2. The Court erred in stopping the trial. This action denied Petitioner her right to a full hearing, to subpoena witnesses, and to present evidence, all rights fundamental to the concept of ordered liberty comprehended by the due process of law and open courts guaranteed by Article 1, Sections 10 and 14 of the Missouri Constitution and the due process of law guaranteed by the fifth and fourteenth amendments to the Constitution of the United States of America. See New York v. O'Neill, 359 U.S. 1, 3 L.Ed.2d 585, 79 Sup.Ct. 564; State ex rel. Williams v. Marsh, 626 S.W.2d 223 (Mo.banc 1982) at page 230; 16A Am.Jur.2d Constitutional Law Sections 839 and 848. While the outcome of a jury trial may be uncertain, Petitioner has a right to opt for that uncertainty as opposed to the certainty of an unfair decision by a claque of lawyers working for Respondents.

3. The Court erred in adopting a purported compromise settlement, which was defective in that it was neither reduced to writing nor executed by the parties as required by law. Section 473.085 of the Revised Statutes of Missouri makes court approval of a compromise settlement contingent upon "an agreement in writing ... executed by all competent persons ... having beneficial interests ....". As the Court expressly found in its purported judgment entered in [sic] the second of March 1994, only the Respondents ("Defendants" in the judgment) have consented to the settlement offered by the administrator ad litem; there is no finding that anybody has executed a written agreement of compromise as required by statute. The Court's act of entering a judgment over Petitioner's objections (filed on the eighth of February 1994) when by statute her written agreement was a prerequisite to judicial approval, is an action committed under color of law in breach of Petitioner's fundamental civil liberties protected by federal law and Guaranteed by Article 1, Section 10 of the Missouri Constitution and the fifth and fourteenth amendments to the Constitution of the United States of America.

4. Rule 78.04 of the Rules of Civil Procedure, effective on the first of January 1994, allows a motion for new trial to be filed within thirty days after the entry of judgment. Judgment in this case was entered on the second day of March 1994.

Albert W. L. Moore, Jr.
554 South Ash
Post Office Box 7800
Independence, Missouri 64053
(816) 254-6070
ATTORNEY FOR PETITIONER
JANICE C. CAMPBELL

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing suggestions in support of motion for a new trial was mailed on this twenty-third day of March 1994 to Les D. Wight, Esq., 530 East 23rd Street, Independence, Missouri 64055, Attorney for Respondents, and to Rebbecca Lake Overman, Esq., 221 West Lexington, Independence, Missouri 64050, Administrator ad Litem.

Albert W. L. Moore, Jr.
Attorney for Petitioner

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
PROBATE DIVISION AT INDEPENDENCE

JANICE C. CAMPBELL	)	
	)	
Petitioner	)	
	)	
vs.	)	Case No. PR94-030836-05
	)	Estate No. 30836
JOSEPH E. CAMPBELL, et al.	)	
	)	
	)	
Respondents	)	
	)	
In the Estate of Joseph F. Campbell	)	
	)	
	)	
Deceased	)	

MOTION FOR NEW TRIAL
OR IN THE ALTERNATIVE TO SET ASIDE

COMES NOW Janice C. Campbell and moves for a new trial or in the alternative to set aside the order rendered therein, for the reasons more fully stated in the suggestions in support hereof filed concurrently herewith and by this reference incorporated herein.

Albert W. L. Moore, Jr.
554 South Ash
Post Office Box 7800
Independence, Missouri 64053
(816) 254-6070
ATTORNEY FOR PETITIONER
JANICE C. CAMPBELL

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing motion for a new trial or to set aside was mailed on this 23rd day of March 1994 to Les D. Wight, Esq., 530 East 23rd Street, Independence, Missouri 64055, Attorney for Respondents, and to Rebbecca Lake Overman, Esq., 221 West Lexington, Independence, Missouri 64050, Administrator ad Litem.

Albert W. L. Moore, Jr.
Attorney for Petitioner

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
PROBATE DIVISION AT INDEPENDENCE

JANICE C. CAMPBELL	)	
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	)	
Respondents	)	
	)	
In the Estate of Joseph F. Campbell	)	
	)	
Deceased	)	

SUGGESTIONS IN SUPPORT OF
NEW TRIAL OR TO SET ASIDE

COMES NOW Janice C. Campbell and for her suggestions in support of her motion for new trial or to set aside the order states and shows the Court as follows:

1. The Court erred in issuing its order of the seventeenth of March 1994 in that the administrator ad litem failed to make a prima facie case for the sale of the Ford stock. In her petition, the administrator ad litem cited a lack of liquidity in the estate to pay expenses, costs and claims, but in her testimony she could not cite any expenses, costs or claims that could not be deferred. Moreover, the administrator ad litem could not account for any cash income

that had been received by the co-personal representatives, as they had never accounted to her for such income. A proper accounting is necessary to any determination that the estate lacks liquidity. Among the liquid assets never accounted for are more than $13,000.00 in cash dividends paid on Ford stock (paragraph two, response to petition for order to sell, filed by Janice C. Campbell on the twenty-second of February 1994).

2. The Court erred in refusing to allow the introduction of evidence that sale of the Ford stock was imprudent and not in the best interests of the estate. The administrator ad litem, in testimony that was vague, evasive, non-responsive disingenuous and insolent, could not or would not say why a productive asset should be sold to pay for realty that was wasting.

3. The Court erred in refusing to accept evidence that the proposed sale under the circumstances violated the equitable principle of marshaling assets. In order to distribute net shares to the three beneficiaries, the estate will have to collect some of the judgment rendered in its favor on the second of March 1994 in PR89-030836-01. Janice C. Campbell as a beneficiary of the estate has no direct legal right to collect that judgment; it was rendered in favor of the administrator ad litem. Hence the administrator ad litem has a legal right to two funds, the judgment and the assets in hand, while Janice C. Campbell has an interest in only one. Hence the judgment, the fund as to which Janice C. Campbell is the junior creditor, should be marshaled to pay the costs, expenses and claims of the estate. Otherwise, Janice C. Campbell's distributive net share will consist of an interest in a possibly unenforceable judgment. When the administrator ad litem was asked whether she had the right

to enforce the judgment, she launched into a non-responsive vituperative jeremiad laced with infantile efforts to insult the questioner. This question, of course, bore directly on the issue of marshaling assets. The administrator ad litem never answered the question and the Court abruptly stopped the line of questioning and brushed off the issue.

4. The Court not only indulged the antics of the administrator ad litem; it encouraged and supported them. The Court made objection on behalf of the administrator ad litem. The Court invented arguments on her behalf. The hearing was wholly undignified and disorderly, and the Court's loud, belligerent, bellicose, boorish and utterly unjudicial conduct flew in the face of Canon 3 of Missouri's Code of Judicial Conduct:

> The judicial duties of a judge take precedence over all the judge's other activities. Judicial duties include all the duties of office prescribed by law. In the performance of these duties, the following standards apply:
>
> A. Adjudicative Responsibilities.
>
> (1) A judge should be faithful to the law and maintain professional competence in it. The judge should be unswayed by partisan interests, public clamor, or fear of criticism.
>
> (2) A judge should maintain order and decorum in proceedings before the judge.

> (3) A judge should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity and should require similar conduct of lawyers and of staff, court officials, and others subject to the judge's direction and control.

The Court's hostility toward the interests of Janice C. Campbell was blatant. The Court laid a spurious ground for its order in arguing sua sponte that Janice C. Campbell had no right to any specific assets of the estate, such as the Ford stock. Janice C. Campbell, however, has never claimed that she did. But she is a beneficiary of the estate and those who administer it have a duty to act prudently and be fair and impartial to all beneficiaries, obligations chronically honored in the breach in the administration of this estate. As an interested person, Janice C. Campbell has standing to object to an imprudent sale of assets and to appeal the Court's order to sell an asset (Sections 472.010(15) and 472.160.1(6) of the Revised Statutes of Missouri). On the seventeenth day of March 1994, the Court took pains to hear all other matters on its docker first, thereby removing from the Court room all outside parties (except, as it turned our, Janice C. Campbell's expert witness). In light of the Court's conduct of the hearing in this matter, its prior action takes on new significance.

5. Rule 78.04 of the Rules of Civil Procedure, effective on the first of January 1994, allows a motion for new trial to be filed within thirty days after the entry of judgment. The order in this case was entered on the seventeenth day of March 1994.

WHEREFORE, Petitioner prays this Court vacate its order of the seventeenth of March 1994 or in the alternative order a new trial of this cause and refer the cause to another judge for hearing.

Albert W. L. Moore, Jr.
554 South Ash
Post Office Box 7800
Independence, Missouri 64053
(816) 254-6070

ATTORNEY FOR PETITIONER
JANICE C. CAMPBELL

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing suggestions in support of motion for a new trial or to set aside was mailed on this fifteenth day of April 1994 to Les D. Wight, Esq., 530 East 23rd Street, Independence, Missouri 64055, Attorney for Respondents, and to Rebbecca Lake Overman, Esq., 221 West Lexington, Independence, Missouri 64050, Administrator ad Litem.

_____

Albert W. L. Moore, Jr.
Attorney for Petitioner

Janice C. CAMPBELL, Appellant,

v.

Joseph E. CAMPBELL, et al., Respondents.

No. WD 49245

Missouri Court of Appeals

Western District.

March 14, 1995.

Motion for Rehearing and/or Transfer to Supreme Court Denied May 2, 1995.

Application to Transfer denied June 20, 1995.

Albert W. Moore, Jr., Independence, for appellant.

Les D. Wight, II, Kevin Thomas, Independence, for respondents.

Before SPINDEN, P.J., and LOWENSTEIN and ELLIS, JJ.

SPINDEN, Presiding Judge.

Janice C. Campbell complains in this appeal that the trial court interrupted her jury trial before she had rested and forced a settlement of her discovery of assets action in violation of her constitutional rights. She also complains that the trial court erroneously ordered the sale of stock held by her father's estate to pay administration expenses. We do not find merit in her complaints and affirm the trial court's judgment.

Campbell filed a petition for discovery of assets in which she contended that her brothers had taken property belonging to her father's estate. She demanded a jury trial, and trial began on January 24, 1994. On the fourth day of trial, the trial court told the jury:

> Ladies and gentlemen of the jury, there's been some mysterious things going on from your point of view, I'm sure. I'm now in a position to explain to you what has happened and why.
>
> Ms. Overman ... is the personal representative of the estate. As personal representative, she is responsible to be administering the Estate of Joseph F. Campbell, deceased. In that regard ... the two Mr. Campbells and Ms. Janice Campbell are heirs or beneficiaries of that estate. They will each take a one-third share of the probate estate.

Ms. Janice Campbell early on, as you've heard in the testimony, perceived that she felt she was not receiving a fair share of what should have been in Mr. Campbell's estate; and so she retained Mr. Moore and here we are. You've heard some of the evidence in regard to what is going on.

Ms. Overman is the real party here who has the legal authority, in my view, to make final decisions as to what is in the best interests of this estate. And basically what we're talking about is what's in the best economic interests. In other words, it's going to cost a lot more to go forward or is -- can we obtain a result at this point which would be economically beneficial to the estate, i.e., to these three individuals ultimately.

[Ms. Overman] has advised me -- she asked me yesterday for time to get into some facts and figures and to consult with [attorneys for the other parties] regarding a possible settlement of this case. And I granted her that time, and she worked until late in the night[.]

Ms. Overman has advised me that she recommends a settlement of this estate, and she's explained generally the terms of that settlement. I believe I have the legal authority to accede to that settlement proposition regardless of whether or not Ms. Campbell totally agrees with that settlement. And so that's what I'm doing.

> And so what I'm telling you is that the case has been settled. You will not be required to decide this case on the facts....
>
> And probably none of the parties here -- I've been around practicing law for over 30 years and a judge for over 20. And the rule of thumb is that if neither side is very happy with the agreement or with the result, why it's probably pretty nearly right. And I think in this case neither parties [sic] are very thrilled with what I'm going to make them do, and therefore, I hope in the long run they will conclude or that fate or history will tell us that this is probably a fairly right result.
>
> ....
>
> And you will be discharged and you won't be called back. You're free to go home, go about your business, and thank you very much.

None of the parties objected to the trial court's dismissing the jury. After the jury was discharged, the trial court conducted a conference in which the administrator ad litem recommended a settlement of the case. At no time during the conference did any of the parties object to the proceedings.

The trial court approved the settlement proposal and entered judgment on March 2, 1994. The trial court stated in its judgment: "The settlement proposed by the Administrator ad Litem appears to fairly affect the rights of all parties, is a reasonable compromise of the controversy, and is in the best interest of the estate."

In the first two of her five points raised on appeal, Campbell complains the trial court denied her constitutional right to a jury trial by discharging the jury before she rested her case. Mo. Cost. art. I, section 22(a) (1945), guaranteed Campbell "the right of trial by jury," even in a discovery of assets action.[1] In re Estate of Fugett, 564 S.W.2d 628, 630 (Mo.App.1978). In her third point, she complains that the trial court erred in entering a judgment based upon the administrator ad litem's oral motion to settle and compromise the case because, she argues, the settlement agreement had to be in writing and executed by all competent parties having beneficial interests.

These points are without merit because the trial court acted pursuant to Section 473.277, RSMo 1994, which authorizes it to accede to an administrator's proposed compromise with the estate's debtors or obligors. The statute says:

> When it appears for the best interest of the estate, the executor or administrator, on order of the court, may effect a fair and reasonable compromise with any debtor or other obligor, or extend, renew or in any manner modify the terms of any obligation owing to the estate.... In the absence of prior authorization or subsequent approval of the court, no compromise binds the estate.

---

[1] Campbell complains that the trial court excused the jury before she rested her case. We will deem this to be true, although nothing in the record supports it. She placed only 33 pages of the trial transcript in the record on appeal: the judge's comments to the jury and the settlement conference.

"The apparent purpose of Section 473.277 is to provide a mechanism for expeditious compromise of claims held by an estate." Smith v. Snodgrass, 747 S.W.2d 743, 745 (Mo.App.1988). The statute does not impose a time limit on the trial court's acceptance of a compromise from the administrator. If during a trial, the trial court determines that the estate's best interest would be served by a compromise and settlement of a claim, we find no prohibition keeping the trial court from doing so.

Campbell does not complain that the settlement was unfair or unreasonable and not supported by sufficient evidence. Her only complaint about the settlement itself is that the administrator ad litem did not reduce her proposal to writing. She bases her complaint on Section 473.085, RSMo 1994. Although that statute, indeed, requires that the settlement terms be in writing, the statute does not relate to a Section 473.277 settlement. It relates only to compromises to which all the parties agree and seek court approval. Section 473.277, on the other hand, gives the trial court authority to compromise a claim if it finds that compromise is in the estate's best interest, regardless of the parties' attitude toward settlement.

Hence, because of the trial court's conclusion that the settlement was fair and in the estate's best interest, and because the settlement resolved all of the issues which the jury trial would have resolved, the jury trial became a useless, moot exercise. The trial court correctly terminated the trial. See State ex rel. Rope v. Borron, 762 S.W.2d 427 (Mo.App.1988).

In her fourth point, Campbell asserts that the trial court erred in ordering the sale of stock. On February 9, 1994, the administrator ad litem petitioned the trial court for an order to sell 980 shares of Ford Motor Company common stock. The administrator ad litem stated in the petition that the stock proceeds would be used to pay for estate expenses, costs and claims. Campbell objected. After a hearing, the trial court ordered the sale on March 17, 1994.

Campbell asserts that the administrator ad litem failed to establish at the hearing a want of liquidity and a need to sell the stock. She contends in the argument portion of her brief that the administrator ad litem could not, or refused to, (1) prove that the expenses and claims could be deferred; (2) deal with the eventuality that the claims and expenses might exceed the assets; (3) deal with the issue of marshaling assets to protect Campbell from being effectively deprived of her share of the residuary estate, and (4) account for the dividends paid on the Ford stock. The only authority Campbell cites in support of her point relied on is Section 473.460, RSMo 1994.

We find nothing in Section 473.460 which requires the administrator ad litem to account for these things, and in the absence of citations of relevant authority by Campbell, we deem her point abandoned as to these items. Inman v. Reorganized School District No. II of Hayti, 845 S.W.2d 688, 694 (Mo.App.1993). To the extent that she is asserting that the administrator ad litem failed to establish at the hearing a want of liquidity and a need to sell the stock, we review the point and find that it is without merit.

Section 473.460.1 provides, "Real or personal property belonging to an estate may be sold ... under court order ... (4) For the payment of expenses of administration including court costs[.]" The administrator ad litem testified at the hearing that the estate had no liquid assets. She stated that the only asset under her control was the stock and some real property. The real property was not in "immediate condition for sale," she said. She also testified that there were ongoing expenses of administration which included utility bills, expenses of maintaining the real property, attorney's fees and court costs. We conclude that substantial evidence existed from which the trial court could have concluded that the sale of the Ford stock was in the estate's best interest.

In her last point, Campbell asserts that the trial court's order allowing the stock sale was void for want of constitutional due process. She says that the trial court denied her right to cross-examine and to introduce evidence. The only authority she cites in support of her point relied on is Mo. Const. art I, sections 10 and 14 (1945), and U.S. Const. amend. V and XIV. She complains that the trial court would not let her present evidence concerning the prudence of not selling the stock. She argues, "There can be no meaningful hearing when the bench takes up the cudgel for the one side and denies the other side the right to present evidence or to cross-examine without gratuitous harassment from the bench, but that is precisely what happened here."

The trial court did not take up the cudgel, nor did it harass. Campbell endeavored to present testimony concerning the stock which the trial court deemed irrelevant. The trial court permitted Campbell to cross-examine the administrator ad litem. When Campbell proffered the testimony of an expert concerning the stock, the trial court refused it and explained:

> I assume your expert would testify that the Ford Motor Company is a strong company, ...that the market is strong, that the prognostication is that the stock will maintain or increase in value and/or dividend productivity and that sort of thing. Is that -- is that the nature of his -- would have been his testimony?
>
> [CAMPBELL'S ATTORNEY]:
> That would be part of it, Your Honor. He would also, I believe, verify the -- the amounts paid in dividends by -- on Ford Motor Company stock, which --
>
> THE COURT: That's a matter of accounting between the [Campbell's brothers] and [the administrator ad litem].
>
> [CAMPBELL'S ATTORNEY]:
> Well, Your Honor, ... as a party in interest, I would think it would be a matter of interest for Janice Campbell as well because --

THE COURT: That's a matter of accounting. They were the former fiduciaries. They must account to [the administrator ad litem]. That has not been done. And that will be ordered right now. And there will be an accounting. So, ... arrange to have a final settlement over from -- from [Campbell's brothers]-- I forget your names. Sorry -- to [the administrator ad litem] within thirty days of this date.

That will then give [the administrator ad litem] standing to determine the propriety of an accountability and will allow her to file objections to that settlement if objections are appropriate.

[CAMPBELL'S ATTORNEY]: Well, Your Honor, if it -- if it turns out that there should be liquid assets that -- that have not been accounted for, then -- then I suggest it's premature to -- to decide now to sell the stock.

THE COURT: I don't think that -- I don't think that this is relevant. You have -- [Y]our client has no specific right to any specific piece of property in this estate. And so, what I'm going to do is allow the -- I'm going to allow the -- the order of sale and let [the administrator ad litem] decide on when and if she should sell the stock.

Generally, a trial court has full discretion to rule on questions regarding the admission of evidence. D.L.H. v. H.T.H., 780 S.W.2d 104, 106 (Mo.App.1989). We will reverse the trial court's rulings on these matters only if we find plain evidence that the court has abused its discretion. M-- D-- v. C-- D--, 691 S.W.2d 406, 408 (Mo.App.1985). Given the nature of these proceedings, we do not discern an abuse of discretion in the trial court's conclusion that Campbell's expert testimony was irrelevant.

The judgment of the trial court is affirmed.

All concur.

IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT

JANICE C. CAMPBELL	)	
	)	
Plaintiff/Appellant	)	
	)	
vs.	)	WD 49245
	)	CIR. CT. NO.
JOSEPH E. CAMPBELL,	)	PR89-030836-01
et al.	)	CIR. CT. NO.
	)	PR94-030836-05
Defendants/	)	
Respondents	)	

MOTION FOR REHEARING
OR IN THE ALTERNATIVE
FOR TRANSFER TO THE SUPREME COURT

COMES NOW Appellant Janice C. Campbell by her attorney Albert W. L. Moore, Jr., and moves pursuant to Rules 83.02 and 84.17 of the Rules of Civil Procedure that this Court grant a rehearing in this cause or in the alternative transfer this case to the Supreme Court of Missouri and in support thereof states:

1. A rehearing in this case should be granted because:

a. The Court as shown by its opinion overlooks rules of statutory construction requiring that statutes be read as a whole, without taking a particular provision out of context, and that all provisions be given effect and harmonized, and the Court thereby misinterprets Section 473.277 to confer on an administrator the power to act without regard to the right to require compliance with the settlement prerequisites of Section 473.085. ("Section" or "Sections" herein, unless otherwise indicated, refer to the Revised Statutes of Missouri.)

b. The Court's opinion overlooks the Missouri Supreme Court's opinion in Mamoulian v. St. Louis University, 732 S.W.2d 512 (Mo.banc 1987), which specifically holds at page 515 that the existence of a power to settle in a section of the probate code other than Section 473.085 does not excuse compliance with the additional settlement prerequisites of Section 473.085.

c. The Court's opinion misinterprets the opinion in Smith v. Snodgrass, 747 S.W.2d 743 (Mo.App.S.D. 1988) to condone Section 473.277 settlements. The Court overlooks the fact that Snodgrass involved an actual settlement between adverse parties, while the adverse parties in the instant case did not settle. The Court also overlooks the fact that Snodgrass did not consider the effect of Section 473.085, nor did it deal with the question of a jury trial demanded by an adverse party litigant who dissented from the proposed settlement.

d. The Court in its opinion overlooks the fact that Janice C. Campbell brought the discovery of assets action and that no provision of the probate code specifically authorizes anybody to take control of the action from her for settlement or for any other purpose.

e. The Court's opinion misinterprets State ex rel. Rope v. Borron, 762 S.W.2d 427 (Mo.App.W.D. 1988) to justify the excusing of the jury herein. The Court overlooks the fact that Rope turned on an outcome-determinative equity issue, which does not exist in the case under review.

f. The Court's opinion overlooks Janice C. Campbell's many objections to the probate division's conduct below.

g. The Court's opinion overlooks the immateriality of the question of objections below; the issue is whether the probate division acted within its legal authority.

h. The Court by its opinion misinterprets Section 473.277 to render its operation unconstitutional in this case.

i. The Court's opinion overlooks and misinterprets the record on appeal in finding that a constitutional hearing was conducted on the sale of Ford stock and that the administrator met her burden of proof.

j. The Court's opinion overlooks the fact that the probate division's judgment and order below were rendered without trial or evidence on a record, violations of due process that preclude effective appellate review and can only be remedied by a trial de novo.

k. The Court's opinion misinterprets Janice C. Campbell's opposition to probate division conduct as an abandonment of such opposition.

2. In the event that Janice C. Campbell's request for rehearing is denied, this case should be transferred to the Supreme Court because:

a. The Court's opinion is directly contrary to the Supreme Court's holding in Mamoulian v. St. Louis University, 732 S.W.2d 512 (Mo.banc 1987), that authority to resolve a matter in one section of the probate code does not excuse compliance with the additional settlement prerequisites of Section 473.085.

b. The Court's opinion allows a judgment in a case at law without affording a duly demanded jury trial.

c. The Court's opinion allows a probate judgment in a case without any trial, solely on the basis of an administrator's oral proposal.

d. The Court's opinion, by reason of 2b and 2c above, construes and applies Section 473.277 in a manner that renders such provision void as a violation of litigants' right to due process under Sections 10 and 14 of Article 1 of the Constitution of the State of Missouri and Amendments 5 and 14 of the Constitution of the United States of America.

e. The Court's opinion allows a judgment to be rendered without a reviewable record, in breach of litigants' right to due process under Sections 10 and 14 of Article 1 of the Constitution of the State of Missouri and Amendments 5 and 14 of the Constitution of the United States of America.

f. The Court's opinion allows arbitrary and capricious conduct by the probate division in the management of an estate, in violation of a beneficiary's right to due process under Sections 10 and 14 of Article 1 of the Constitution of the State of Missouri and Amendments 5 and 14 of the Constitution of the United States of America by overlooking and misinterpreting the record on appeal.

WHEREFORE, Appellant Janice C. Campbell respectfully requests the Court to grant her a rehearing in this case or in the alternative to transfer the case to the Supreme Court.

Albert W. L. Moore, Jr.
554 South Ash
Post Office Box 7800
Independence, Missouri 64053
(816) 254-6070

ATTORNEY FOR PETITIONER
JANICE C. CAMPBELL

CERTIFICATE OF MAILING

I hereby certify that a copy of the above and foregoing was mailed, first class postage prepaid, this twenty-fourth day of March 1995 to Les D. Wight, Esq., 530 East 23rd Street, Independence, Missouri 64055, Attorney for Joseph E. Campbell and Richard F. Campbell, and to Rebbecca Lake Overman, Esq., 221 West Lexington, Independence, Missouri 64050, Administrator ad Litem.

_____

Albert W. L. Moore, Jr.
Attorney for Petitioner

MISSOURI COURT OF APPEALS
WESTERN DISTRICT
1300 Oak Street
Kansas City, Missouri 64106-2970
Peggy Stevens McGraw
AREA CODE 816-889-3600
Clerk-Docket Attorney
FAX 816-889-3668

May 2, 1995

IMPORTANT NOTICE

TO: ALL ATTORNEYS OF RECORD

RE: CAMPBELL, JANICE C., APPELLANT
vs.
CAMPBELL, JOSEPH E., ET AL., RESPONDENT
OVERMAN, REBBECCA LAKE, ADMINISTRATOR AD LITEM, RESPONDENT

WD# 49245

Please be advised that Appellant's motion for rehearing is OVERRULED and motion for transfer to Supreme Court is DENIED.
See Rule 83.03

PEGGY STEVENS MCGRAW

CLERK DOCKET ATTORNEY

cc: Albert W.I. Moore [sic]
Les D. Wight II
Rebbecca Lake Overman

IN THE SUPREME COURT OF MISSOURI

JANICE C. CAMPBELL	)	Filed May 15, 1995
	)	
Plaintiff/Appellant	)	
	)	
vs.	)	Supreme Court No. 77975
	)	
JOSEPH E. CAMPBELL, et al.	)	
	)	
Defendants/ Respondents	)	

APPLICATION FOR TRANSFER

To the Honorable Judges of the Supreme Court of Missouri:

1. The Court of Appeals decision in Campbell v. Campbell, WD 49245, is in direct conflict with the following decisions of the Supreme Court of Missouri:

a. Mamoulian v. St. Louis University, 732 S.W.2d 512 (Mo.banc 1987) regarding the application of Section 473.085. (All references to Sections herein, unless otherwise indicated, refer to the Revised Statutes of Missouri.)

b. A. B. v. Frank, 657 S.W.2d 625 (Mo.banc 1983) and Wollard v. City of Kansas City, 831 S.W.2d 200 (Mo.banc 1992) in respect of reading a statute as a whole.

2. Matters of general interest and importance in this case are the following:

a. Does Section 473.277, in authorizing an administrator to enter into settlements, override a litigant's timely demand for jury trial under Section 473.340.2 and the settlement requirements of Section 473.085?

b. Is a judgment based solely on an administrator's oral motion consistent with a litigant's right to due process under Sections 10 and 14 of Article 1 of the Constitution of the State of Missouri and Amendments 5 and 14 of the Constitution of the United States of America?

c. Is an order in an adversary probate proceeding, issued without a meaningful hearing, consistent with a litigant's right to due process of law under Sections 10 and 14 of Article 1 of the Constitution of the State of Missouri and Amendments 5 and 14 of the Constitution of the United States of America?

d. Does the Court of Appeals have jurisdiction to construe and apply Sections 473.277 and 472.141 so as to deny due process of law in violation of Sections 10 and 14 of Article 1 of the Constitution of the State of Missouri and Amendments 5 and 14 of the Constitution of the United States of America?

e. Do the many errors and omissions cited in the motion for rehearing below require correction as part of the Supreme Court's duty to supervise inferior courts under Section 4 of Article 5 of the Constitution of the State of Missouri?

3. Attached hereto are the following:

a. a copy of the opinion of the Court of Appeals;

b. a copy of the motion for rehearing or transfer filed in the Court of Appeals;

c. proof of notice to the Clerk of the Court of Appeals and each opposing party of this application for transfer; and

d. a copy of the notice from the Court of Appeals denying the motion for rehearing or transfer.

4. This application is accompanied by one copy of each brief filed in the Court of Appeals in WD 49245.

5. Janice C. Campbell ("Plaintiff") filed a discovery of assets action against her brothers in the decedent's estate of their father in Jackson County. Plaintiff is a one-third residuary beneficiary under the father's will; she duly demanded a jury trial under Section 473.340.2. In the midst of trial, the administrator ad litem made an oral motion to settle, whereupon the probate judge sent the jury away, refused to conduct a bench trial, and entered judgment upon the administrator's oral motion. Plaintiff moved for mistrial on the denial of jury trial and objected to the terms of the proposed settlement and to the entry of judgment without the probate division's complying with Section 473.085, which requires a written settlement agreement executed by all competent parties with an interest. The probate division's judgment denied most of Plaintiff's claims against the brothers, and entered a money judgment against Plaintiff. The Court of Appeals held that the probate division could

enter a judgment under Section 473.277 without regard to a litigant's right to jury trial under Section 473.340.2 and without regard to the settlement requirements of Section 473.085. In another adversary proceeding in the same estate, the administrator applied for an order to sell estate property. Plaintiff, as a party with an interest, objected. The matter was designated as adversary, but Plaintiff was denied a meaningful hearing; an order to sell was entered. At each stage of all proceedings herein, Plaintiff asserted her right to due process under Sections 10 and 14 of Article 1 of the Constitution of the State of Missouri and Amendments 5 and 14 of the Constitution of the United States of America.

6. The Court of Appeals decision allows the entry of a judgment or order proposed by an administrator, without affording a trial or meaningful hearing, in an adversary probate action. The administrator's oral motion in the discovery of assets trial was expressly based on her "independent investigation" outside the record. The administrator's application for an order to sell estate property was granted without allowing Plaintiff to introduce evidence or to cross-examine on vital points. Thus Plaintiff has been denied her rights to present evidence and cross-examine witnesses, and to have a record for effective review. Such rights are fundamental to the due process of law under Sections 10 and 14 of Article 1 of the Constitution of the State of Missouri and Amendments 5 and 14 of the Constitution of the United States of America (16A Am.Jur.2d Constitutional Law Sections 839, 848 and 849; Adams By and Through Adams v. Children's Mercy Hospital, 832 S.W.2d 898 (Mo. 1992) at page 906, cert. den. 113 S.Ct. 511, 121 L.Ed.2d 446, transferred to 848 S.W.2d 535; Tullock v. St. Charles. 602 S.W.2d 860 (Mo.App. 1980) at

pages 862-863; Smith v. Atty. Gen. of Maryland, 415 A.2d 651 (Md.App. 1980); and In re S M W, 485 S.W.2d 158 (Mo.App. 1972) at pages 163-164). The probate division's peremptory judgment on an oral motion by an administrator grounded on the administrator's "independent investigation" outside the record, the division's arbitrary refusal to allow Plaintiff's witness to testify regarding the sale of estate property, and the division's capricious curtailment of cross-examination by Plaintiff's counsel regarding such sale are arbitrary acts of government; the protection of individuals against such conduct is the great purpose of constitutional due process (Wilwording v. Swenson, 502 F.2d 844, cert.den. 95 S.Ct. 835, 420 U.S. 912, 42 L.Ed. 843, on remand 405 F.Supp.447, affirmed 538 F.2d 332).

7. Allowing the inferior courts to construe and apply statutes in an unconstitutional manner would seem to render such statutes unconstitutional in operation. The Court of Appeals has no jurisdiction to declare a statute unconstitutional. Such jurisdiction is reserved to this Court (Section 3 of Article 5 of the Missouri Constitution). It follows that the Court of Appeals has no jurisdiction to render statutes unconstitutional in operation by construing and applying them to deny constitutional due process.

8. The Court of Appeals decision is in direct conflict with Mamoulian v. St. Louis University, 732 S.W.2d 512 (Mo.banc 1987), which specifically holds at page 515 that the existence of a power to settle, found in a section of the probate code other than Section 473.085, does not excuse compliance with the additional settlement requirements of Section 473.085. The opinion below holds that Section 473.277 exempts the probate division from compliance with Section 473.085, which provides that a written settlement agreement signed by all parties in interest is prerequisite to court approval of a compromise settlement in probate.

9. The opinion below is in direct conflict with A. B. v. Frank, 657 S.W.2d 625 (Mo.banc 1983) and Wollard v. City of Kansas City, 831 S.W.2d 200 (Mo.banc 1992), which hold that statutes must be read as a whole, with reasonable meaning and effect given to all parts. The opinion below takes Section 473.277 as an absolute grant of authority to settle an adversary probate action upon an administrator's oral motion, without regard to the requirement of jury trial under Section 473.340.2 or the settlement requirements of Section 473.085. Such a notion is comparable to saying that a section authorizing an administrator to file a legal action allows such an action regardless of whether it is upon a lawful cause of action. The opinion below is inconsistent with this Court's mandate to read statutes as a whole, and to give reasonable effect to each part.

10. The many errors and omissions in the opinion below deprive it of all moral and persuasive force; hence it seems appropriate for this Court to exercise its supervisory control under Section 4 of Article 5 of the Missouri Constitution.

11. Unless this Court acts now to quash the judgment below, the Court of Appeals opinion will be seized upon by probate judges to render many hasty, ill-considered and unfair judgments, whether to clear dockets or to indulge a mean, capricious or biased spirit. Such is the natural consequence of allowing action bereft of constitutional safeguards and conferring power beyond the bounds of common sense.

WHEREFORE, Petitioner Janice C. Campbell prays this Court issue its order of transfer directing the judges of the Missouri Court of Appeals, Western District, to certify to this Court the record in said mentioned cause and, upon consideration thereof, to quash said judgment of the said Court of Appeals and give such other and further relief as may seem meet and proper in the premises.

Albert W. L. Moore, Jr.
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(816) 254-6070

ATTORNEY FOR PETITIONER
JANICE C. CAMPBELL

IN THE SUPREME COURT OF MISSOURI

No. 77975
W.D. No. 49245

May Session, 1995

Janice C. Campbell,
Appellant,

vs. (TRANSFER)

Joseph E. Campbell, et al.,
Respondents.

Now at this day, on consideration of appellant's application to transfer the above-entitled cause from the Missouri Court of Appeals, Western District, it is ordered that the said application be, and the same is hereby denied.

STATE OF MISSOURI-Sct.

I, THOMAS F. SIMON, Clerk of the Supreme Court of the State of Missouri, certify that the foregoing is a full, true and complete transcript of the judgment of said Supreme Court, entered of record at the May Session thereof, 1995, and on the 20th day of June, 1995, in the above-entitled cause.

Given under my hand and seal of said Court, at the City of Jefferson, this 20th day of June, 1995.

/s/Thomas F. Simon Clerk

/s/Christina S. Vinson D.C.

(2)

Supreme Court, U.S.
FILED
NOV 17 1995
CLERK

No. 95-452

In The

Supreme Court of the United States

October Term, 1995

JANICE C. CAMPBELL,

Petitioner,

vs.

JOSEPH E. CAMPBELL, *et al.*,

Respondents.

On Petition for Writ of Certiorari to the Missouri Court of Appeals, Western District

BRIEF IN OPPOSITION FOR RESPONDENT REBBECCA LAKE OVERMAN, ADMINISTRATOR AD LITEM

REBBECCA LAKE OVERMAN
Counsel of Record
Attorney and Administrator ad Litem for The Estate of Joseph F. Campbell
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QUESTIONS PRESENTED

1. Is § 473.277 of the Missouri Revised Statutes unconstitutional?

2. Did the trial court act within its statutory powers in dismissing a jury and accepting the settlement proffered by the administrator ad litem for the estate?

3. Did the trial court violate the petitioner's rights to due process by refusing to hear expert testimony regarding the viability of certain Ford Motor Company stock?

LIST OF PARTIES

The parties to the proceedings in the Missouri Court of Appeals, Western District, were the petitioner Janice C. Campbell, the respondents Joseph E. Campbell and Richard Campbell, and the Administrator ad Litem, Rebbecca Lake Overman.

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Appendix A — Second Amended Petition for Discovery of Assets Dated January 5, 1994 ..... 1a

No. 95-452

In The

Supreme Court of the United States

October Term, 1995

JANICE C. CAMPBELL

Petitioner,

vs.

JOSEPH E. CAMPBELL, *et al.*

Respondents.

On Petition for Writ of Certiorari to the Missouri Court of Appeals, Western District

RESPONDENT'S BRIEF IN OPPOSITION FOR REBBECCA LAKE OVERMAN, ADMINISTRATOR AD LITEM

Respondent, Rebbecca Lake Overman, Administrator ad Litem for the Estate of Joseph F. Campbell, respectfully requests that this Court deny the Petition for Writ of Certiorari seeking review of the opinion of the Missouri Court of Appeals, Western District, in this case.

Respondent, Rebbecca Lake Overman, Administrator ad Litem for the Estate of Joseph F. Campbell respectfully submits this brief in opposition to the Petition for a Writ of Certiorari of Janice C. Campbell, filed with this Court on September 18, 1995.

STATUTES INVOLVED

This case applies Mo. Rev. Stat. § 473.277 (1994), which provides:

> When it appears for the best interest of the estate, the executor or administrator, on order of the court, may affect a fair and reasonable compromise with any debtor or other obligor, or extend, renew or in any manner modify the terms of any obligation owing to the estate. If the executor or administrator holds a mortgage, pledge or other lien upon property of another person, he may accept, in lieu of foreclosure, a conveyance or transfer of the encumbered assets from the owner thereof in satisfaction of the indebtedness secured by the lien, if it appears for the best interest of the estate and if the court so orders. In the absence of prior authorization or subsequent approval of the court, no compromise binds the estate.

This case also applies Mo. Rev. Stat. § 473.460 (1980), which provides:

> 1. Real or personal property belonging to an estate may be sold, mortgaged, leased, or exchanged under court order for any of the following purposes:

(1) For the p ment of claims allowable against the estate;

(2) For the payment of any allowance made to the surviving spouse and minor children of a decedent;

(3) For the payment of any legacy given by the will of the decedent;

(4) For the payment of expenses of administration including court costs;

(5) For the payment of any gift, estate, inheritance or transfer taxes assessed upon the transfer of the estate or due from the decedent or his estate;

(6) For any other purpose in the best interest of the estate; or if it would be burdensome to the heirs or devisees to distribute the personal property or the real estate in kind.

2. Real and personal property may be sold or mortgaged under order of the court when necessary for the purpose of making distribution of the estate or any part thereof.

3. Personal property of the estate shall be exhausted before real estate is ordered sold for the payment of the obligations of the estate unless the court otherwise orders.

This case also applies Article V, Section 3 of the Constitution of Missouri, 1982, which provides:

> The supreme court shall have exclusive appellate jurisdiction in all cases involving the validity of a treaty or statute of the United States, or of a statute or provision of the constitution of this state, the construction of the revenue laws of this state, the title to any state office and in all cases where the punishment imposed is death. The court of appeals shall have general appellate jurisdiction in all cases except those within the exclusive jurisdiction of the supreme court.

OPINION BELOW

The opinion of the Missouri Court of Appeals, Western District is reported at 898 S.W.2d 630 (Mo. App. 1995) and is included in the Appendix to the Petition at pages A98 through A108.

STATEMENT OF JURISDICTION

On March 14, 1995, the Missouri Court of Appeals, Western District, rendered its opinion in this cause. Thereafter, on May 2, 1995, the Missouri Court of Appeals, Western District, denied petitioner's Motion for Rehearing and/or Transfer to Supreme Court. The Missouri Supreme Court denied petitioner's Application to Transfer on June 20, 1995. While the petitioner asserts jurisdiction under 28 U.S.C. § 1257(a), the Court is without jurisdiction to hear the questions presented in the Petition because they were not properly raised or presented in the Missouri state courts below. United States Supreme Court Rule 14.1(h).

COUNTERSTATEMENT OF THE CASE

The factual background of this case is correctly set forth in the opinion by the Missouri Court of Appeals. A summary and some historical notes follow.

The petitioner, Janice C. Campbell, and respondents Joseph E. Campbell and Richard Campbell are the surviving children of the decedent, Joseph F. Campbell who died testate on October 21, 1987. Resp. App. A2. The petitioner commenced an action to Discover Assets against her brothers (who also served as co-personal representatives for the estate) on March 29, 1993. Resp. App. A3. She made a Demand for Jury Trial on September 14, 1993. Pet. App. A10. Thereafter, the court appointed Rebbecca Lake Overman to serve as administrator ad litem for the estate. A Second Amended Petition to Discover Assets was filed on January 6, 1994. Resp. App. A1. That action alleged that, during a period of incapacity of the decedent, the brothers had sold or transferred certain of the decedent's assets to one or the other of them. Resp. App. A1-A6.

On January 24, 1994, petitioner's action came on for trial. Pet. App. A15 The record on appeal reflects that a jury was empaneled. Pet. App. A15. The record on appeal does not contain any of the proceedings involving opening statements, presentation of evidence by any of the parties, proceedings in chambers, or the like. At the petitioner's election, those items from the transcript were omitted. Pet. App. A15. The balance of the transcript deals with the dismissal of the jury and a settlement conference which was held on the record in open court. Pet. App. A15-A38. None of the parties made any objection to the dismissal of the jury or subsequent settlement proceedings. Pet. App. A15-A38.

The "settlement" recommended and presented by the

administrator ad litem sought monetary recovery and applied certain setoffs against each party's distributive share of the estate. The trial court made a finding that "[t]he settlement proposed by the Administrator ad Litem appears to fairly affect the rights of all parties, is a reasonable compromise of the controversy, and is in the best interest of the estate." Pet. App. A15-A38.

On March 17, 1994, in a separate action, the administrator ad litem petitioned the court for an order to sell 980 shares of Ford Motor Company stock held in the name of the decedent. Pet. App. A66-A82. The administrator ad litem testified that there were, at that time, only two assets within her control which were not the subject of litigation, namely two parcels of real property and 980 shares of Ford Motor Company stock. Pet. App. A69. The administrator testified that there were expenses of administration, including court costs, attorneys fees, utility expenses for the real property and other anticipated costs which would require the liquidation of the stock. Pet. App. A69-A74. The petitioner sought to admit the testimony of a stock analyst that the Ford stock represented a viable investment and that it would produce income if left undisturbed. Pet. App. A80. The trial court refused to allow the testimony and issued an order for the sale of the Ford Motor Company stock. Pet. App. A82-A83. The Missouri Court of Appeals, after consolidating the appeals, affirmed the trial court in all respects. The Missouri Supreme Court, in its discretion, denied transfer for review. Pet. App. A123-A124.

SUMMARY OF ARGUMENT

This Court should not grant Campbell's Petition for Writ of Certiorari with respect to questions one and two which claim that the trial judge denied her right to a jury trial by terminating the proceedings and accepting a settlement proposed by the administrator ad litem for the following reasons: (1) the

petitioner failed to preserve any constitutional issue for review; (2) the determination of the Missouri Court of Appeals upholding the trial court's actions do not raise a federal issue or otherwise present an issue of significance for this Court's review; and (3) the trial court's action did not violate her Fifth and Fourteenth Amendment right to due process and the opinion of the Missouri Court of Appeals, Western District, is correct.

The petitioner's primary claim, contained in questions 1 and 2 represents a constitutional attack of Mo. Rev. Stat. § 473.277 (1994) under the Fourteenth and Fifth Amendments of the United States Constitution. That statute allows the administrator of a decedent's estate to settle or compromise a claim against a debtor to the estate where it appears that same is in the best interest of the estate. Petitioner claims that this statute and the trial court's reliance on it in terminating a jury trial to recover assets for the estate and accept a settlement recommended by the administrator ad litem constitutes a violation of her right to trial by jury and therefor, to due process of law.

Petitioner's claim is specious in that it assumes she has an *absolute* right to have all issues ultimately determined by a jury regardless of the consequence to the estate and other interested parties such as creditors, devisees and beneficiaries. At issue is whether an ultimate beneficiary to an estate has the right to oppose a reasonable compromise of disputed issues of fact and law if such opposition may likely result in detriment to the other creditors, devisees and beneficiaries.

In her third question for review, the petitioner claims that she was denied due process of law in an unrelated proceeding involving the administrator ad litem's motion to sell certain personal property belonging to the Estate of Joseph F. Campbell. Petitioner's claim raises no federal issue and there is no reason for this Court to take up the petitioner's request. She is merely a

disgruntled litigant who was dissatisfied with an evidentiary ruling made by the trial court with respect to certain expert testimony not directly related to the legal issues at hand. It is axiomatic that the trial court has full discretion to rule on questions regarding the admission of evidence and reversal of such decisions is made only upon the showing that the trial court has abused its discretion. *M__D__ v. C__D__*, 691 S.W. 2d 406, 408 (Mo. App. 1985).

REASONS FOR DENYING THE WRIT

I.

THE WRIT SHOULD BE DENIED BECAUSE THE PETITIONER PRESERVED NO CLAIM FOR REVIEW, BECAUSE THIS CASE DOES NOT PRESENT SIGNIFICANT FEDERAL ISSUES OR OTHER IMPORTANT REASONS FOR GRANTING THE WRIT AND BECAUSE THE MISSOURI COURT OF APPEALS CORRECTLY DECIDED THE CASE.

Petitioner's first two questions for review address the constitutionality of the trial court's action, and the statute on which the trial court relied, in discharging the jury and accepting a "settlement" proposed by the administrator ad litem in an action brought by the petitioner to discover assets in a decedent's estate.

A. Petitioner Has Preserved Nothing For Review.

Petitioner was present in court and represented by counsel when the trial judge announced to the jury that he was dismissing them from further service on the case because the administrator ad litem had arrived at a settlement which was fair to all parties and the estate. Pet. App. A15-A18. Petitioner made no objection to the dismissal of the jury. Thereafter, the trial judge heard the

formal presentation of the settlement from the administrator ad litem. The proposal incorporated a substantial number of assets which were listed in detail in open court. The petitioner made no objection to either the manner of the presentation or its content.[1] Pet. App. A20-A38. Under Missouri procedure, failure to timely object leaves nothing for appellate review. *Powell v. Hickman*, 793 S.W. 2d 885, 893 (Mo. App. 1990); *Sullivan v. Union Electric Light & Power*, 56 S.W. 2d 97, 104 (Mo. 1932).

Furthermore, the petitioner's constitutional challenges to Mo. Rev. Stat. § 473.277 (1994) were not, and could not have been presented to or decided by the Missouri Court of Appeals because, under Missouri procedure, the Supreme Court of Missouri has exclusive jurisdiction over challenges to the constitutionality of Missouri statutes. Missouri Constitution, Article V, Section 3; Resp. Br. at 2. By permitting this appeal to proceed in the Missouri Court of Appeals rather than the Supreme Court of Missouri, the petitioner waived any constitutional challenges to the statute. *McLeran v. St. Luke's Hosp. of Kansas City*, 687 S.W. 2d 892, 893 (Mo. banc 1985); *State ex rel. Union Electric Co. v. Public Service Comm'n*, 687 S.W. 2d 162, 165 (Mo. banc 1985).

The Missouri Court of Appeals refused to rule on any constitutional challenge raised by the petitioner. In a footnote, the Court of Appeals noted that the petitioner's allegation that she had been denied a jury trial was unsupported by the record because the petitioner had failed to provide any portions of the transcript which might have shed light on her claim. Pet. App.

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1. Petitioner now complains that the settlement proposal should have been in written form as required under Mo. Rev. Stat. § 473.085 (1994). As the Missouri Court of Appeals, Western District, aptly discussed in its opinion, Mo. Rev. Stat. § 473.085 (1994). applies only to settlements which are the result of the agreement of all parties and where the parties seek approval of the settlement from the Probate Court.

A102. As a result of the deficient record, the Missouri Court of Appeals refused to consider the petitioner's constitutional challenge. Pet. App. A102.

All of the petitioner's claims must be rejected since they were not specifically preserved at the appellate level. The petitioner's allegations in her Motion for New Trial discuss only the denial of her right to a jury trial in general. Pet. App. A84-A89. Not until the petitioner's Motion to Transfer this cause to the Supreme Court of Missouri, following affirmance by the Missouri Court of Appeals, does she specifically raise the question of whether Mo. Rev. Stat. § 473.277 (1994) constitutes a violation of due process under the Fourteenth and Fifth Amendments of the United States Constitution. Pet. App. A116-A122. This Court has long held that a general complaint of denial of a federal right is not sufficient to preserve anything for certiorari review. *Banker's Life & Casualty Co. v. Crenshaw*, 486 U.S. 71, 76-77 (1988); *Taylor v. Illinois*, 484 U.S. 400, 407 (1988)[2]. The petitioner's generic claim that she was denied due process of law because a jury trial was terminated without her consent is not so specific as to raise a federal question for the state appellate court's review. *See Hartford Life Ins. Co v. Johnson*, 249 U.S. 722 (1918). *See also, Sayward v. Denny*, 158 U.S. 941 (1894).

B. The Issues Raised Do Not Present a Federal Question.

Petitioner's case derives from an action in the Circuit Court of Jackson County, Missouri and seeks relief under Mo. Rev. Stat. § 473.340 (1994)which allows any interested person to bring an action to discover assets which are or should be claimed by an estate. Dissatisfied with the trial court's decision to accept a

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2. A lengthy analysis of this issue may be found in footnote 9 of the *Taylor* opinion. 484 U.S. at 406, fn. 9.

compromise settlement recommended by the administrator of the estate, she appealed to the Missouri Court of Appeals, Western District. Further dissatisfied with the opinion rendered by the Missouri Court of Appeals, the petitioner sought transfer to the Missouri Supreme Court. On June 20, 1995, the Missouri Supreme Court denied transfer.

Petitioner's complaint that Mo. Rev. Stat. § 473.277 (1994) is unconstitutional is not appropriate for this Court's review. The Missouri Supreme Court declined to render any opinion on the constitutionality of Mo. Rev. Stat. § 473.277 (1994). By denying transfer, it relies on the Missouri Appellate Court's analysis of the statute as it was applied to the petitioner. As this Court has previously declared "questions of state law required to be decided (in the United States Supreme Court) should first be considered and decided by the state or federal court from which the case is brought. . . . (and) (t)he decision of the highest court of a state on matters of state law are in general conclusive upon (the United States Supreme Court). . . . *Huddleston v. Dwyer*, 322 U.S. 232, 237 (1944). Not every complaint regarding the action of the state court is suitable for certiorari review. On certiorari review of a state's highest court, there are strong reasons for the Supreme Court to adhere scrupulously to the customary limitations on its discretion where difficult issues of great public importance are involved. *Illinois v. Gates*, 462 U.S. 213, 224 (1983). Certiorari jurisdiction should be used sparingly and then, only in cases of particular gravity. *Hamilton-Brown Shoe Co. v. Wolf Brothers & Co.*, 240 U.S. 251, 258 (1916).

The petitioner's arguments fall far short of that necessary for this Court to take up jurisdiction. The Missouri Court of Appeals has on two occasions given a clear and precise analysis of the purpose and application of Mo. Rev. Stat. § 473.277 (1994) as it relates to the administrator's right to settle disputed claims on behalf of an estate. (A more complete discussion of the Missouri

Court of Appeals analysis of Mo. Rev. Stat. § 473.277 (1994) appears below. *See Smith v. Snodgrass*, 747 S.W. 2d 743 (Mo. App. 1988); *See also Campbell v. Campbell*, 898 S.W. 2d 630 (Mo. App. 1995) *infra* at 13-16.) The petitioner makes no attempt to show this Court why that analysis fails to meet the due process requirements of the Fifth and Fourteenth Amendments of the United States Constitution.

Moreover, the questions presented for review have no impact on the ultimate issues in the case. The petitioner did not complain at *any* level of the trial or appellate process that the settlement was unfair, unreasonable or unsupported by the evidence. This Court is not in the business of considering every theoretical hypotheses for some nebulous cause. This Court has made it clear that it considers only matters of extreme importance where injustice is manifest and the ultimate betterment of the American system of jurisprudence is at stake. *Hamilton- Brown Shoe Co. v. Wolf Brothers & Co., supra* at 258; *Illinois v. Gates, supra* at 224. This is not such a case.

C. The Opinion of the Missouri Court of Appeals Was Correct in This Case.

Petitioner claims that she was deprived of property without due process of law under the Fourteenth Amendment. She claims, in essence, that as the aggrieved petitioner, she had the *absolute* right to control the litigation, including the right to insist on a jury trial. In spite of this bold assertion, the petitioner admits in her brief that due process does not always mandate that the issues be tried by a jury. Pet. Br. pp.8-9. Clearly, in matters of equity, summary judgment, administration of estates, and the like, the plaintiff is not entitled to a trial by jury. *See State ex rel. Rope v. Borron*, 762 S.W. 2d 427 (Mo. App. 1988); *see Ross v. Bernhard*, 396 U.S. 531, 538-539 (1970).

In support of her claim, the petitioner relies on the general proposition that a cause of action is "property" entitled to protection against deprivation without due process of law. Her complaint hinges on her assumption that the action brought to discover assets was *her* property right. In fact, the petitioner was merely a conduit for the initiation of the action. The estate was entitled to the proceeds of the action and therefor, the "property right" lies with the administrator for the estate.

In Missouri, the discovery of assets statute, Mo. Rev. Stat. § 473.340 (1994), allows the initiation of an action by virtually anyone who is not an absolute stranger to the asset in question or the estate. *See* Pet. App. A7. The petitioner in that action may have no right ultimately to benefit from the retrieval of the asset into the estate. His interest does not improve or increase by the mere initiation of the action. Mo. Rev. Stat. § 473.340 (1994) was designed to afford a summary method of discovering assets and expedite the administration of estates in the collection of assets, and to permit recovery of property or the proceeds thereof to the estate. *Caldwell v. First Nat. Bank of Wellston*, 283 S.W. 2d 921, 924 (Mo. App. 1955); *Davis v. Johnson*, 58 S.W.2d 746, 748 (Mo. 1933). Thus the right to possession of the assets "discovered" from the action is vested in the administrator for the estate.

Mo. Rev. Stat. § 473.277 (1994) creates the framework by which an administrator may seek the approval of the probate court of a settlement in a disputed claim or cause brought by or benefiting the estate. In *Smith v. Snodgrass*, 747 S.W. 2d 743 (Mo. App. 1988), the Missouri Court of Appeals discussed at length the purpose of Mo. Rev. Stat. § 473.277 (1994) and the relative roles of each party. That opinion sets forth the balancing of rights between the expectancy interest of the beneficiaries of the estate and the administrator's duty to marshall assets in a way which is reasonable in light of all factors and all parties. *Id.* at 745. The expectancy rights of the beneficiaries are protected

when they are given notice and an opportunity to be heard when an administrator seeks approval of a compromise.

This Court has never considered the constitutionality of Mo. Rev. Stat. § 473.277 (1994) or any similar probate statute from another state. This Court is not left without guidance, however. A "discovery of assets" action in a probate matter is very similar to a "derivative" action brought by a shareholder to enforce the rights of a corporation with respect to a broad range of misconduct, misappropriation or other legal claim.

The fundamental nature of a derivative action is to give the shareholder, who serves as the "nominal plaintiff", the right to hail the wrongdoer and the corporation into court to enforce the rights of the corporation against the wrongdoer. *See Daily Income Fund, Inc. v. Fox*, 464 U.S. 523 (1984). The corporation is the real party in interest, is entitled to the proceeds of the action and is bound by the result. *Ross v. Bernhard*, 396 U.S. 531, 538 (1970). In *Ross v. Bernhard, supra*, this Court discussed the relative rights of the parties in a derivative action. This Court considered the *corporation's* right to a jury trial on issues of law as protected by the Seventh Amendment to the United States Constitution, since it was the real party in interest. *Id.* at 534-535.

On the question of who has the right to settle or dismiss a shareholder's derivative action, this Court has specifically found that a state law permitting a disinterested committee of directors to dismiss a derivative action did not constitute a violation of the nominal plaintiff's rights. *Burks v. Lasker*, 441 U.S. 471, 478-479 (1979). In reaching that conclusion, this Court stated that the standard for reviewing state statutes was as follows:

> Although "[a] state statute cannot be considered 'inconsistent' with federal law merely because the statute causes the plaintiff

> to lose the litigation," . . . federal courts must be ever vigilant to insure that application of state law poses "no significant threat to any identifiable federal policy or interest. . . ."

Id. at 479 (citations omitted).

As for the New York statute permitting settlement or dismissal by the disinterested committee of directors, this Court found that such action was not contrary to federal policy or interest and that "[t]here may well be situations in which the independent directors could reasonably believe that the best interests of the shareholders call for a decision not to sue—as, for example where the costs of litigation to the corporation outweigh any potential recovery." *Id.* at 485. Clearly, this Court has upheld state law which allows the representatives of a corporation to terminate an action where, in their best business judgment, such an action is not in the best interest of the shareholders.

The instant case presents a precisely analogous set of issues, actions and parties. The petitioner was the nominal plaintiff who, under a broadly defined state statute, brought an action to enforce the rights of the estate against perceived wrongdoers. The administrator ad litem, representing the estate, was charged with the fiduciary duty to use her best judgment in determining whether the continuation of the action was in the best interest of the estate.

The Missouri courts applied this same analysis in considering the application of Mo. Rev. Stat. § 473.277 (1994) (settlement statute) to Mo. Rev. Stat. § 473.340 (1994) (action to discover assets). By giving the administrator the right to compromise a claim, the real party in interest maintains control of the action and ultimately, serves the best interest of the estate. Compromise is favored in the law, *Estate of Basler v. Delassus*,

supra at 796, and it would be unreasonable to require an administrator to "oppose a claim" to the "last ditch" since under such a scenario "(t)he estate might achieve a total victory or might suffer total defeat." *Estate of Basler v. Delassus*, 690 S.W. 2d 791, 796 (Mo. banc 1985); *see Estate of Veselich v. Northwestern Nat. Cas. Co.*, 760 S.W. 2d 564 (Mo. App. 1988).

The Missouri courts have interpreted the intent of Mo. Rev. Stat. § 473.277 (1994) as "provid(ing) a mechanism for expeditious compromise of claims held by an estate." *Smith v. Snodgrass*, *supra* at 745. As the Missouri Court of Appeals aptly pointed out in its opinion, "(t)he statute does not impose a time limit on the trial court's acceptance of a compromise from the administrator." Pet. App. A103. At such time as the administrator ad litem believed that it was no longer in the best interest of the estate to continue the trial, she had the *duty* to seek approval of a settlement from the trial court. Indeed, the purpose of the Missouri Probate Code, as it relates to the powers of the administrator, is to charge the representative of the estate with the fiduciary duty to make decisions which relate to the assets and obligations of the estate and to require him to act in the best interests of *all* persons interested in the estate. *Estate of Veselich v. Northwestern Nat. Cas. Co.*, *supra* at 569; *see Kentucky Cent. Life Ins. Co. v. Vollenweider*, 844 S.W. 2d 460 (Mo. App. 1992). Any other rule of law would result in anarchy wherein an unreasonable creditor or beneficiary could hold the estate hostage by refusing to compromise a claim or action at the expense of all others with an interest in the outcome. *See Estate of Basler v. Delassus, supra* at 796-797.

The petitioner was merely an ultimate beneficiary, not unlike a corporate shareholder. As such, she had no right to prohibit the administrator ad litem from taking action which was in the best interest of the estate. Following a hearing on the settlement proposal, the trial court agreed that the best interest of the estate

was served by accepting the administrator's settlement proposal and no one, not even the petitioner, objected to the proposal on the merits. The Missouri Court of Appeals, Western District, specifically affirmed the trial court's ruling that the settlement was a reasonable compromise of the controversy and was in the best interest of the estate. Pet. App. A101.

II.

THE WRIT SHOULD BE DENIED BECAUSE PETITIONER'S COMPLAINT THAT THE TRIAL COURT INCORRECTLY REFUSED TO ADMIT CERTAIN EVIDENCE DOES NOT RAISE A SUBSTANTIAL ISSUE FOR CERTIORARI REVIEW AND BECAUSE THE TRIAL COURT'S RULING WAS CORRECT.

Petitioner's final question for review involves her complaint that, in a hearing on the administrator ad litem's Motion to Sell Personal Property, the trial court improperly excluded the expert testimony of a stock analyst who would have testified that the 980 shares of Ford Motor Company stock was a viable investment and would produce income if left intact. In sustaining the administrator ad litem's objection to the expert testimony, the trial court stated that it presumed the witness would testify that the Ford stock was a viable asset and that if left intact it would produce income. Pet. App. A80. Given the stated presumption by the trial court, the petitioner was not harmed by its exclusion. Thereafter, the trial court found that there was substantial evidence that good cause existed under Mo. Rev. Stat. § 473.460 (1980) to order the stock sold. Pet. App. A81.

In her appeal, the petitioner suggests that the trial judge "took up the cudgel" for the administrator ad litem in rejecting the expert testimony and refusing to allow reasonable cross-examination on the issue of other available assets. Pet. App.

A105. The Missouri Court of Appeals dealt with this issue by recognizing that Mo. Rev. Stat. § 473.460 (1980) allows for the liquidation of personal property, under court order, for the purpose of paying expenses of administration, claims, and expenses associated with the management of the estate assets. Pet. App. A105.

Mo. Rev. Stat. § 473.460 (1980) requires that personal property be sold before real property when funds are needed for the administration of the estate. Resp. Brf. *supra* at 2. The trial court followed the statute in this regard and the petitioner's complaint regarding the court's refusal to hear the expert testimony had no impact on the outcome of the case.[3] The trial court had a duty to follow the statute and order the personal property sold. Its refusal to hear testimony it deemed irrelevant had no bearing on the outcome of the hearing.

In Missouri, a trial court has broad discretion to rule on questions regarding the admission of evidence. *D.L.H. v. H.T.H.*, 780 S.W. 2d 104, 106 (Mo. App. 1989). Reversal of the trial court's ruling will come only on a showing of abuse of discretion. *M__D__ v. C__D__*, 691 S.W. 2d 406, 408 (Mo. App. 1985). Likewise, this Court has routinely supported those same legal precepts, including the admission or exclusion of *expert testimony. Salem v. United States Lines Company*, 370 U.S. 31, 35-36 (1962). In order to preserve the issue of exclusion of evidence for appeal, the party offering the testimony must make a specific offer of proof. Failure to do so leaves nothing for this Court to review. *Central Pac. R. Co. v. People of State of California*, 162 U.S. 91, 118 (1896). The transcript of the hearing reveals that no offer of proof was made by the petitioner. Pet. App. A79-A81.

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3. The record does not reflect that the petitioner suggested that there existed any other personal property within the administrator's control which could be sold to pay expenses of administration.

The petitioner contends that the trial court's refusal to hear the testimony of her witness amounts to a violation of due process under the Fifth and Fourteenth Amendments to the United States Constitution. Such a claim is virtually beyond belief. For all of the reasons set forth in Respondent's first point regarding this Court's limitation of certiorari jurisdiction this Court should not consider this claim to rise to the level of a federal question or one so weighty that the United States Supreme Court should take it up.

The petitioner is not unlike the myriad of other disgruntled litigants who does not have every irrelevant witness heard or every far-reaching question answered. Ultimately, as with her other claims, the petitioner failed to preserve anything for this Court's review. She did not deem it worthy of inclusion in her Motion to Transfer to the Missouri Supreme Court. Pet. App. A116-122. This Court should give it no further consideration.

CONCLUSION

For the reasons set forth above, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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APPENDIX A — SECOND AMENDED PETITION FOR DISCOVERY OF ASSETS DATED JANUARY 5, 1994

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
PROBATE DIVISION
AT INDEPENDENCE

No. PR89-030836-01

Estate No. 30836

JANICE C. CAMPBELL
Post Office Box 13531
Tucson, Arizona 85732-3531

Petitioner

vs.

JOSEPH E. CAMPBELL
1509 50th Street North
Blue Springs, Missouri 64015

and

RICHARD F. CAMPBELL
18819 East 5th Street North
Independence, Missouri 64056

Respondents

In the Estate of
Joseph F. Campbell

Deceased

Appendix A

SECOND AMENDED PETITION FOR DISCOVERY OF ASSETS

COMES NOW Petitioner Janice C. Campbell by her attorney Albert W.L. Moore, Jr., and for her second amended petition for discovery of assets states and shows the Court as follows:

1. Petitioner is one of the heirs of the Decedent Joseph F. Campbell and a legatee under the terms of his will in the above estate, in which letters testamentary were issued on November 3, 1988.

2. Respondents are the co-personal representatives in the above estate in this Court and legatees under said will.

3. From a point in time not later than 1983 until his death on October 21, 1987, Decedent was of unsound mind and was incapable of contracting or of managing his affairs and lacked the mental capacity to give a gift or otherwise perform an act having legal effect.

4. From a point in time not later than 1983 until his death on October 21, 1987, Decedent was in feeble health, mentally weak and infirm, and was subject to, and susceptible to, being led by attention and was easily influenced.

5. During the period of time described in paragraph 4 above, Respondents completely dominated Decedent and ran his affairs.

6. From a point in time preceding the year 1983 until Decedent's death on October 21, 1987. Respondent enjoyed a confidential and fiduciary relationship with Decedent, by which

Appendix A

Respondents set out to and did induce Decedent to cooperate in one or more of the transactions set out below.

7. During one or more of the periods of time described in paragraphs 3, 4 and 6 above, Respondents caused certain property of Decedent and interests in the property of Decedent (more fully set out below) to be sold, or to be transferred without due consideration to one or both of the Respondents herein.

8. When Decedent's health deteriorated in 1983, Respondents caused joint bank accounts to be opened in the names of Decedent and one or both of Respondents.

9. During one or more of the periods of time described in paragraphs 3, 4 and 6 above, income, benefits and other receipts accruing to Decedent were deposited into the joint bank accounts described in paragraph 8 above and disbursed by one or both of the Respondents.

10. On or about August 11, 1986, funds of Decedent were used to purchase real estate described as Lot 8, Sandalwood, a subdivision in Blue Springs, Jackson County, Missouri, for Respondent Joseph E. Campbell.

11. During one or more of the periods of time described in paragraphs 3, 4 and 6 above, Respondents caused the sale of real estate owned by Decedent situated on the Lake of the Ozarks, Missouri, Cedar Point Lot No. 2, and thereby injured the Decedent's estate.

12. On or about March 18, 1986, Respondents sold 654 shares of Decedent's Ford Motor Company common stock and thereby injured the Decedent's estate.

Appendix A

13. During one or more of the periods of time described in paragraphs 3, 4, and 6 above, Respondents used Decedent's funds to purchase motor vehicles for individuals other than Decedent.

14. During one or more of the periods of time described in paragraphs 3, 4 and 6 above, Respondents took other monies and chattels from Decedent.

15. During one or more of the periods of time described in paragraphs 3, and 4 and 6 above, Respondents took property of Decedent for which they have made no accounting, the exact description of which is unknown to Petitioner.

16. After Decedent's death on October 21, 1987, Respondents took property of Decedent properly a part of Decedent's probate estate for which they have made no accounting, the exact description of which is unknown to Petitioner.

17. Respondents' actions in the premises were outrageous because of their evil motive or reckless indifference to the rights of others.

WHEREFORE, Petitioner prays that the Court discover the property belonging to Decedent, determine the title and right of possession thereto, determine the persons who have an interest in said property together with the nature and extent of such interest and direct the delivery or transfer of said property to an administrator de bonis non of the estate of Joseph F. Campbell, deceased, appointed by the Court and render judgment against Respondents and in favor of said administrator de bonis non for all losses, expenses and damages to the above-captioned estate, including punitive damages and interest as provided by law, and for such other relief as is just and proper.

Appendix A

s/ Albert W.L. Moore, Jr.
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Post Office Box 7800
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(816) 254-6070

ATTORNEY FOR PETITIONER
JANICE C. CAMPBELL

AFFIDAVIT OF JANICE C. CAMPBELL

STATE OF ARIZONA)
) ss.
COUNTY OF PIMA)

Affiant Janice C. Campbell, having first been duly sworn, states that the foregoing is true to the best of her knowledge.

s/ Janice C. Campbell
Janice C. Campbell

Subscribed and sworn to before me this 5 day of Jan, 1994

s/ Ann M. Battcher
Notary Public

My Commission Expires:
My Commission expires [illegible]